



City of Harrisonburg, Virginia

Planning Commission Meeting

August 14, 2013

7:00 p.m.

Regular Meeting
409 South Main Street

1) Call to order, roll call, determination of quorum, and review/approval of minutes from the July 10, 2013 regular meeting.

2) New Business

Street Closing – Kin Group LLC 1,557 Square Foot Portion of Undeveloped Collicello Street (Collicello North Project)

Consider a request from Kin Group, LLC to close a 1,557 square foot portion of undeveloped Collicello Street right-of-way (ROW). The ROW is adjacent to tax map parcels 40-H-8 and 40-I-14, 15, & 16. The subject area is directly south of undeveloped areas of Collicello and 6th Streets that the applicant previously received approval to purchase. If closed and purchased, the applicant would incorporate the area within their approved Collicello North residential development project.

Street Closing – Undeveloped Oak Drive (Between 22-E-9 and 22-F-8)

Consider a request from the City of Harrisonburg to close a 9,386 +/- square foot portion of undeveloped Oak Street right-of-way (ROW) located off of Circle Drive. The ROW is 50-feet wide by approximately 190-feet in length and is located between tax map parcels 22-E-9 and 22-F-8 and adjacent to tax map 20-H-1, which is the City's Rocktown Trails at Hillandale Park property.

3) Unfinished Business

4) Public Input

5) Report of secretary and committees

Proactive Zoning

6) Other Matters

Considering Amendments for Telecommunications Regulations Report

7) Adjournment

Staff will be available Monday September 9, 2013 at 4:30 p.m. for those interested in going on a field trip to view the sites for the September 11, 2013 agenda.

MINUTES OF HARRISONBURG PLANNING COMMISSION

July 10, 2013

The Harrisonburg Planning Commission held its regular meeting on Wednesday, July 10, 2013 at 7:00 p.m. in the City Council Chambers, 409 South Main Street.

Members present: Richard Baugh, Gil Colman, MuAwia Da'Mes, Deb Fitzgerald, Jefferson Heatwole, and Henry Way.

Members absent: Judith Dilts.

Also present: Stacy Turner, Director of Planning and Community Development; Adam Fletcher, City Planner.

Chair Fitzgerald called the meeting to order and determined there was a quorum with six members in attendance. She then asked for a correction to be made within the attendance portion of the June minutes to reflect that Mrs. Turner was periodically in and out of the Planning Commission meeting on June 12, 2013. Chair Fitzgerald continued asking if there were any other corrections, comments or a motion regarding the minutes from the June 12, 2013 Planning Commission meeting.

Mr. Heatwole moved to approve the minutes as amended from the June 12, 2013 regular Planning Commission meeting.

Mr. Colman seconded the motion.

Mr. Way abstained from voting because he was not in attendance at the meeting.

All members voted in favor of approving the amended June 2013 minutes (5-0).

New Business

Preliminary Plat – Daly Subdivision (Ramblewood Road)

Chair Fitzgerald read the request and asked staff to review.

Mr. Fletcher said the Comprehensive Plan designates this area as Low Density Mixed Residential. This designation states that these large undeveloped areas located at the edge of the City are planned for residential development containing a mix of large and small-lot single family detached dwellings and attractive green spaces. Planned “open space” (also known as “cluster”) developments are encouraged. The intent is to allow innovative residential building types and permit creative subdivision design solutions that promote neighborhood cohesiveness, walkability, connected street grids, community green spaces, and protection of environmental resources. Such innovative residential building types as zero lot-line development and patio homes will be considered as well as other new single family residential forms. The gross density of development in these areas should be in the range of 1 to 6 dwelling units per acre.

The following land uses are located on and adjacent to the property:

Site: Parcel of 96 +/- acres, 13.056 acres of which is undeveloped land located in the City zoned R-1, Single Family Residential and 83 +/- acres of which is in Rockingham County and zoned A-2, General Agricultural District, containing a single family residence

North: Undeveloped parcel zoned R-1, Single Family Residential

East: 83 +/- acre portion of this property containing a single family home, located in Rockingham County and zoned A-2, General Agricultural District

South: Undeveloped parcel, zoned R-1, Single Family Residential, and further south a single family home and The Crossings single family subdivision, all zoned R-1

West: Single family residences, zoned R-1, Single Family Residential

The property requested to be subdivided consists of 96 +/- acres of land and crosses the City-County boundary, with 13.056 acres in the City. The owner has applied to subdivide a lot of 11,869 square feet, fronting on Ramblewood Road, with the intention of constructing a single family dwelling on the newly created parcel.

Often subdivisions of only one new lot fall into the “minor subdivision” classification, requiring only administrative review and approval. The “minor subdivision” process, however, is available only to parcels of five or less acres in area; therefore this subdivision must proceed through the preliminary subdivision process.

Ramblewood Road, in front of this property, is a prescriptive right of way as it has never been dedicated for use as a road and the boundary of the property extends into the paved street area. Properties in the City fronting public streets that do not contain the required right of way width are required to dedicate the required right of way when they undergo subdivision or development. In addition, if the street itself does not meet minimum City standards for the designated street classification, they are also required to install street improvements (such as pavement widening, curb, gutter and sidewalk) during the subdivision or site plan process. However, for subdivisions of the type requested here, property zoned R-1 with only one additional lot created on a City maintained street, that fit within the minor subdivision qualifications, these street improvements are typically not required.

The minor subdivision process, created by the Subdivision Ordinance, Section 10-2-8. Waiver of chapter requirements applies to parcels of five acres or less proposed to be divided into not more than four lots, or divisions which simply change or vacate existing lot lines. Under this process, City staff may administratively waive one or more of the requirements of the subdivision ordinance provided the subdivision otherwise conforms to the zoning ordinance and other city plans and does not involve any new public street. In accordance with this section of the ordinance, City staff has set an administrative policy to generally not require street improvements for subdivisions creating no more than one additional R-1 lot fronting a street that is maintained by the City.

As this subdivision must go through the Preliminary Subdivision process instead of the administrative minor subdivision process, requirements of the ordinance can only be waived by City Council, following consideration of Planning Commission. This section of Ramblewood Road, and most all of Ramblewood Road, does not meet City requirements as it is improved only with approximately a 22 foot pavement width. Therefore, the applicant is requesting a variance to Sections 10-2-66 (Compliance with standards, etc., of city) and 10-2-67 (Responsibility for cost) of the Subdivision Ordinance, that otherwise would have required construction of street improvements including pavement widening, curb, gutter, storm drain and sidewalk.

With the exception of the requested variance, the subdivision otherwise meets all City requirements. The owner has agreed to provide right-of-way across the entire frontage of their property on Ramblewood Road, as required by the Subdivision Ordinance, Section 10-2-45. Land dedication. This right of way dedication is shown by the hatched area on the preliminary plat and consists of 12,525 square feet in area, described in a note as being offset 50 feet from the existing right of way alignment on the opposite side of Ramblewood Road. In addition, the lot can be served by City

water and sewer, with sewer service occurring through a private easement across the parent tract as shown on the plat.

City staff has no concerns with the granting of the requested variance to waive the requirement for construction of street improvements. Although not constructed to City standards, Ramblewood Road is a City maintained street. The only sections of Ramblewood Road meeting the City standard are short sections at its intersections with Stone Spring and Greendale Roads. Constructing improvements along the entire 560 +/- foot frontage of this property would be excessive for a division of one parcel to allow construction of a single family home and would be difficult to do in this curved section of roadway that does not tie into any existing improvements. As explained, if the parent tract had been smaller and the subdivision had qualified for the minor subdivision process, this variance would have been granted administratively. Staff recommends the preliminary plat for approval as requested.

Chair Fitzgerald asked if there were any questions for staff. Hearing none, she continued by saying this is not a public hearing, however the applicant may come forward to speak if they would like.

At this time the applicant declined and the Chair asked if there was further discussion or a motion on the request.

Mr. Way made a motion to recommend approval of the preliminary plat request as presented.

Mr. Heatwole seconded the motion.

Chair Fitzgerald called for a voice vote on the motion.

All voted in favor of the motion to recommend approval (6-0).

Chair Fitzgerald said this request would move forward to City Council on August 13, 2013.

Rezoning – 803, 813, & 833 Chicago Avenue (Family Dollar)

Chair Fitzgerald read the request and asked staff to review.

Mr. Fletcher said the Comprehensive Plan designates this area as Neighborhood Residential. This designation states that this type of land use highlights those neighborhoods in which existing conditions dictate the need for careful consideration of the types and densities of future residential development. Infill development and redevelopment must be designed so as to be compatible with the existing character of the neighborhood. These are older neighborhoods, which can be characterized by large housing units on small lots.

The following land uses are located on and adjacent to the property:

- Site: Vehicle repair business; zoned M-1
- North: Taxi cab service and vehicle repair business; zoned M-1
- East: Across Chicago Avenue, single-family homes; zoned R-1
- South: CFW Network offices; zoned B-2 and B-2C
- West: Contractor office, vehicle repair business; zoned M-1 and across undeveloped Rockingham Drive, mini-storage units, zoned M-1

The applicants are requesting to rezone their property on Chicago Avenue from M-1, General Industrial District to B-2C, General Business District Conditional. If the request is approved a Family Dollar store is intended to be constructed on the site.

The property is located along the western side of Chicago Avenue, mid-block between 3rd Street and Waterman Drive. Currently situated on the site are several buildings where a truck and tire service center for over the road tractor trailers operates. At present, there are multiple City Code violations, such as storage of inoperable vehicles, overgrown grass and weeds, junk and discarded materials, and unscreened storage and repair of vehicles, occurring on this property and several surrounding parcels. All property owners for those parcels in violation have been notified.

The Comprehensive Plan designates this area which is bounded by undeveloped Rockingham Drive to the north, Chicago Avenue to the east, and 3rd Street to the south, as Neighborhood Residential. Previously it was designated Commercial, but was changed during the 2004 Comprehensive Plan Update and now ties together the Neighborhood Residential east of Chicago Avenue and southwest of 3rd Street. This land use designation does not support the requested rezoning to General Business District; however staff recognizes that it would probably require control of all parcels within this immediate area in order to develop it residentially. The property is currently zoned Industrial and staff acknowledges that it could be used in ways more intense than the requested use and even less compatible with nearby neighborhoods.

City staff met with the applicant's representatives to discuss our concerns regarding land use, the development of this site, and the nearby neighborhood. In response to staff's concerns the applicants have submitted proffers for use restrictions and site development.

The conceptual site plan, which illustrates an 8,320 square foot building with parking along the front and one side of the building, has been proffered by the applicants. They have stated the building will be constructed as described in the elevation submitted on the site plan. The applicants have also proffered to not allow vehicle sales, vehicle repair, vehicle fuel stations, and bus stations at the property. Staff is appreciative of these proffers which remove uses with the most negative aesthetic impact on the homes across Chicago Avenue. However, staff believes the layout could be more sensitive to the single-family neighborhood by shifting the building forward with parking to the rear, or perhaps buffering the look of the front of the building and the tan-colored, metal walls along the sides of the building with foundation landscaping.

Parking lot landscaping for the proffered site plan would require either seven large deciduous trees, eleven small/ornamental deciduous trees, or a combination of evergreen, large, and small deciduous trees planted within the ten-foot landscape border adjacent to the public street. As well, individual landscaping islands would require one tree and three shrubs to be planted in each. Along with meeting all the requirements of the parking lot landscaping regulations, the applicants are proffering eight additional shrubs or bushes as shown on the proffered plan.

The property has 365+/- lineal feet of road frontage along Chicago Avenue, which allows for a total of 365 square feet of signage on the site. The applicants have proffered a reduction of 90 square feet from the freestanding sign allowance of 240 square feet and 10-feet in height from the 35-foot height allowed in B-2. The proffer provides that the single free standing sign for the site would be limited to 150 square feet and no taller than 25-feet in height. The remaining 215 square feet of allowed signage could be placed on walls of the building. Additionally, there is the potential for LED illumination of signage on walls and freestanding signs. Staff feels the signage permitted by the proffer is still a bit intense for the single-family residences directly across from the property.

The Comprehensive Plan Street Network Map identifies Chicago Avenue as a collector Street; it serves as the access to many local residential streets. Staff believes any commercial use of this site needs to recognize that Chicago Avenue is not an arterial roadway.

While the requested rezoning of the site may be a change for the better from what exists there now, staff continues to have some apprehension regarding the proximity of the development to the single-family neighborhood directly across Chicago Avenue. Staff appreciates the use proffers and additional landscaping; however staff continues to feel the overall signage and layout for the site are not neighborhood friendly. Staff does not recommend in favor of the rezoning request to B-2C.

Chair Fitzgerald asked if there were any questions for staff.

Mr. Colman said is it correct to say the side and back of the subject property are adjacent to Planned Commercial property.

Mr. Fletcher said directly behind the property is Rockingham Drive which separates the site from the Planned Commercial uses that are along Waterman Drive. All of the zoning along Waterman Drive in this area is actually General Industrial. When this area was annexed into the City they were given zoning classifications that were very similar to the existing uses on the site that they were in the County; which is why many of those properties are still zoned M-1. We do have a long term plan for commercial establishments for Waterman Drive. Red Front Supermarket, which is just nearby the subject property, is designated commercial, and there are a few commercial establishments in the area. All of these properties were given the B-2, zoning designation when they were annexed into the City.

Chair Fitzgerald asked if there were any further questions for staff. Hearing none, she opened the public hearing and asked the applicant or applicant's representative to speak.

Richard Johnson with Blackwell Engineering said they had developed the site plan for Family Dollar. I do want to clarify on the landscaping the conflict between shrubs, bushes, and trees; we will be adjusting the proffer letter to state that eight additional trees or bushes in the locations shown. There are probably another 40-60 plantings that are going to be planted as well in order to meet the ordinance. This site is going to be well landscaped. I do not have anything further, unless you have questions regarding the site development.

Mr. Way said from what staff has said about bringing the building forward, more toward the street, are there engineering problems with doing that or is it by choice.

Ken Hammond, agent for the applicants, said this is probably the fifteenth iteration of the site plan; which has caused us a great deal of consternation. It is a triangular site, with existing driveways, add in the size of the building, and the required number of parking spaces and it becomes a challenge. We are a national retailer with 7,500 stores and only 22 distribution centers; we should have ten times as many distribution centers. Therefore, instead of having the smaller city sized trucks delivering to stores once a week, it is a large, eighteen-wheeler that delivers. We need a larger drive aisle to maneuver our trucks on site. Family Dollar is radical about the safety issues on these tighter sites, and this is the preferred layout which makes certain that the truck fits. This is really something that is non-negotiable for us; this is the site plan. It is good from the customer, retailer, and trucking standpoint.

Mr. Hammond continued by saying he would like to address a couple of the comments from staff. When we first approached the City regarding the rezoning we were given a long list of suggestions

of what staff was looking for us to do and I feel we have incorporated all of them, as well as going back to a second round and providing things that the City was not even asking for. Like the sign height, in the B-2 district it is 35-feet in height; we discussed lowering that because that is more like a highway sign height. We agreed that 25-feet would be more appropriate. Upon further discussion, we said our prototype sign is 20-feet; therefore we revised the sign height down to 20-feet in height.

We are trying to cooperate as much as we certainly can. We want to be in this location. The whole neighborhood aspect of the City's long term plan, that we may conflict with now, is actually more of a reason for us to be in this area. We do really well in neighborhood settings; we become somewhat of the "walk-to" grocery store. Our prototype building, as shown on the plan, is actually a brand new type that adds over 50,000 dollars of cost to construction that is totally voluntary on our end. It is a completely different look; it has upgraded building materials and upgraded architectural enhancements. I feel that the retail site plan that is before you, with the added landscaping and certainly with the street improvements that the City is preparing to do, will make for a modern retail look; whereas, right now you have a blighted truck maintenance and repair area. Frankly, allowed by-right, if this rezoning were not to be approved the uses that would go there are much more of a detriment to a neighborhood. I see this as a huge upgrade. We are good corporate citizens and we obviously add to the City's tax base. We hire locally and have many compelling reasons for you to approve this.

Mr. Colman said you talk about the neighborhood friendliness, should there not be some sidewalks from the roadway to the building; a sidewalk through the parking lot or along the side so that persons do not have to walk in and through the parking lot to get to the store.

Mr. Da'Mes agreed and added that it appears to be designed for people coming in with cars, not a neighborhood walking in.

Mr. Hammond said I do not know that we have ever done a store with a sidewalk leading to the store from the street.

Mr. Coleman said what I am trying to point to is to make it more neighborhood friendly. You want to have access for people to walk up to the store without actually having to walk into the parking lot.

There was discussion regarding a location for a sidewalk that would not interfere with the parking lot travelway.

Mr. Hammond said if the approval tonight is a "yes" with the sidewalk and a "no" without, I am certain we could do a sidewalk. I would ask that we keep an eye on budget, with all the landscaping and upgrades to the building, it gets to a threshold where the numbers stop working.

Mr. Da'Mes asked how is the parking space situation; do we have excess parking spaces.

Mr. Fletcher replied that it is the bare minimum of parking spaces.

Mr. Da'Mes asked if there was any consideration to reduce the number of parking spaces to allow for more green space on the site.

Mr. Fletcher said that is a special use permit (SUP) within the B-2 district and they could certainly ask for such. As you know, when you request that particular SUP you must maintain the area as green space, it cannot be used for anything else. We have not discussed this with the applicant.

Mr. Da'Mes said I notice that many of these types of commercial establishments throughout the City seem to have excess parking. It is good to meet the requirements, but there is a lot to be said for reducing that amount too; particularly when you have the situation of a convenience store where customers are not necessarily going to park there for extended periods of time. Accessibility and parking is important for the developer, but sometimes I think we "over pave" areas.

Mr. Fletcher said I had actually thought about this, but I did not discuss it with staff. I envisioned that this was one of those situations where they were already rather constricted with the layout and that they had maximized parking to meet the minimum. I do like the idea of reducing the parking; but that would be a special use permit request.

Mrs. Turner said I think we would need a slight adjustment if the applicant believes this is something they are interested in. The proffers would need to be adjusted or the site plan would need to be changed because the plan is proffered and it shows 42 parking spaces.

Mr. Colman asked if there could be just one entrance dedicated to the truck delivery; rather than having those 38-foot wide drives throughout the site.

Mr. Hammond said the drives are on the City plans currently.

Mr. Fletcher said to clarify what Mr. Hammond is saying is that the two entrances, as shown on the plan, are existing and meeting what the dedicated right-of-way is. The City has already communicated to the property owner about the sidewalk project and has made an agreement with the property owner about how many entrances they will provide to the site. Where those entrances are shown is not something the City said is mandatory.

Mr. Colman said it seems logical to eliminate the middle entrance and have the second entrance further west. This would allow for just a delivery truck entrance and drive aisle.

Mr. Hammond said we looked at every possible aspect for getting this truck on site and what is shown is the one plan that works, perfectly.

Chair Fitzgerald asked if there were any further questions for staff or the applicant. Hearing none, she asked if there was anyone wishing to speak in favor of the request. Hearing none, she asked if there was anyone wishing to speak in opposition of the request. Hearing none, she closed the public hearing and asked for discussion on the rezoning request.

Mr. Way asked if this was part of a corridor enhancement area.

Mr. Fletcher replied I do not think that it is.

Mr. Baugh said those corridors are direct access into the City center; this is just an internal street.

Chair Fitzgerald said when we visited the site on Monday we noted the number of bicycles and pedestrians that travel along this route. It is not too far from Waterman Elementary School and is a major transportation route for people driving, walking, and biking back and forth from the school. One of my concerns is the entrances and exits from this lot onto a two lane interior road of the City, and would they affect those pedestrians travelling to and from the elementary school.

Mr. Fletcher said it is somewhat hard to answer that question. I tend to want to say no, because the entrances are only six feet wider than the minimum standard. I do not know if six feet causes much of a significant concern for us. Any commercial entrance is going to cause concern when you have children walking along the street; but I do not know that it is increased in this particular case.

Mr. Heatwole said I am somewhat torn on this because it is an obvious improvement to this area, but I want to take into consideration the Land Use Guide and staff's input. With the Comprehensive Plan in mind for what works in that area, are there things in addition to the listed proffers that would make this an agreeable request for staff.

Mr. Fletcher said it is difficult to answer that question. Staff did not see any other layouts for this request other than the one before you. I am sure that they looked into every option as they have said and they cannot make it work. The staff report lays out what we feel; it could be more pedestrian oriented by bringing the building closer to the public street. We have not seen any other iterations; this is the layout they want. We have not seen any different ideas such as entrances or entrance types and layout of parking. Obviously if you pull the building closer to the street there is a lot of area behind the building where you could have parking and a loading zone area. We continue to believe that the signage is not really in conformance with this corridor or this area. When I envision something that is more pedestrian friendly I see a sign that is more in the range of ten to twelve feet high. They are allowed a lot of sign area remaining for advertising. There is nothing wrong with the way our sign regulations operate in that manner; it is about how our regulations are put into place at this site. This site is not planned for this type of commercial use or this intensity.

It is not so much that we are completely opposed to commercial, because we recognize the industrial uses that could go on site currently. It is about having this opportunity to do something that is right for the community and do something that is a bit more friendly to the ideals and things that we are striving for. Approving this the way it is shown here does not get us to those goals.

Mr. Way said there are a couple of things referenced in the Chicago Avenue study that was just completed, some of the things that were emphasized in that study were about pedestrian access and the aesthetics to the whole corridor. I think that speaks to this issue of having the building sit back from the road – it does not particularly speak to pedestrian accessibility and improving the walkability of the street.

Another reference is the Comprehensive Plan and not just for this area; but for the goals stated throughout the City to help create more beautiful, walkable areas and enhance social interaction. As well, it discusses avoiding streetscapes dominated by parking lots, and to me this does exactly the opposite of that. I do not think this particular design as shown here follows what the City has put forward in the Comprehensive Plan and, at the moment, I am skeptical of this plan.

Mr. Colman said does the required landscaping provide enough buffering of the area, including the parking lot.

Mr. Fletcher said when we speak of buffering many times there is this idea of buffering and screening that you cannot see through. The answer to your question is probably no, there is not a buffering thing going on here with the landscaping ordinance. What you are achieving is the streetscape of trees being planted between the public street and the parking lot. The amount of trees is based upon the amount of frontage of the parking lot to the public street. With the design shown, they would be required to put in a significant amount of trees along the frontage; of course where they locate them within that ten-foot boarder is entirely up to the developer. They could put them all in one corner, they do not have to be scattered every so many feet to create a buffer or screening.

Mrs. Turner said the staff report does spell out how many trees would be required based upon the frontage of the parking lot. Seven large deciduous, or eleven small/ornamental deciduous trees, or a combination of both and not necessarily evenly spaced out. The landscaping islands would require

one tree and three shrubs to be planted in each, which gives you a better sense of how many trees would be required.

Mr. Colman said my question was more of how does it conform to the residential feel of the area. You can have plenty of trees in one corner, but it does not necessarily meet the intent of the area.

Mrs. Turner said they did offer the one proffer to plant additional trees or bushes. One of the things we mentioned in the staff report, were some foundation plantings around the building that could soften the effect of the commercial appearance as well. This has not been a subject that the applicant has followed up on at this time.

Mr. Da'Mes said there are lots of enhancements planned for the Chicago Avenue corridor, including a round-a-bout, does this affect any of those plans.

Mr. Fletcher replied it does not. I spoke to Public Works staff, specifically about the improvements for this section of Chicago Avenue, and it is shown as two lanes, wider bike lanes, and sidewalk improvements. The City has the amount of right-of-way needed to make the desired improvements.

Mr. Baugh said I may be stating the obvious, but, the entire Chicago Avenue Roadway Project always stands out to me because it is one thing that, when I came on to Council five years ago, was just another aspirational thing that we knew we needed to do. This is one plan that has moved very much toward the front of the line and is second in line; it is behind Reservoir Street improvements. Usually road projects are done to deal with increased traffic; in this case that is not the issue. The existing two lane road is sufficient for the traffic, it is all the pedestrian and bicycling problems that are really driving this road improvement project; making it safe for bicycle and pedestrian traffic. As well, the recognition that the pedestrian traffic will increase once it becomes a safer road to travel.

Chair Fitzgerald said do we have some sense about how much traffic would be added.

Mr. Fletcher said the traffic impact analysis (TIA) was included in the packet. I cannot answer too many technical questions associated with that, but I know the applicant's engineer prepared this and he is available to answer questions. The numbers in the TIA were only associated with the proffered use. If you are looking at the TIA you will notice that the peak hour generator is on Saturday, with 62 total trips.

Chair Fitzgerald said given that there are no traffic problems in the area to speak of, except for the pedestrian and bicycling activity, this does not add a huge load or concern to the area.

Mr. Fletcher said when you compare the industrial uses to the commercial uses some may argue that the commercial uses increase the traffic. Commercial traffic is different from industrial traffic, which is generally employees and trucks; commercial is customers.

Mr. Colman said are you saying that staff is not completely opposed to the idea of commercial; but, is opposed to the proffered layout. If a different layout was presented would that make a difference.

Mr. Fletcher said that is possible; but we have not seen anything different. Honestly, if we were to get into the design specifics and changes here tonight, we could not comfortably give you a solid recommendation on any specific changes. We would have to take some time to look at it and evaluate it.

Mr. Way said to my mind it is about layout; I do not have any particular problem with the commercial use. I think a case can be made for the fact that there are other commercial uses along

that street. It is just the nature of the layout and how it fits with what we think of as being neighborhood residential. All the points that have been emphasized tonight about the pedestrian access along Chicago Avenue and how this plan seems to run counter to that. The whole principle of how it is set up is just problematic to me and the feel of the neighborhood.

Chair Fitzgerald asked if there was a motion at this time.

Mr. Way moved to recommend denial of the rezoning request.

Chair Fitzgerald asked if there was a second.

Mr. Colman seconded the motion.

Mr. Baugh said the one thing that I was considering before voting was whether the applicant would have a preference between going forward with an unfavorable recommendation or tabling this for a month to perhaps make revisions based on tonight's discussion.

Mr. Hammond said I would be willing to commit to a sidewalk to bring pedestrians in towards the store, but again, the site plan is as it is.

Mr. Da'Mes asked if they would like to consider reduced parking spaces.

Mr. Hammond said we are just trying to meet the City's requirements; we do not need those 42 parking spaces. Generally speaking the rule of thumb in retail is five spaces per 1,000 square feet of gross building area. You do not want to have too few spaces; it is like the kiss of death in retail. In the spirit of compromise we could probably delete four spaces; I do not believe that would hurt us. We would delete the spaces and be willing to turn that area into landscaped area.

Mr. Way said would reducing by four spaces change the location of the building.

Mr. Hammond said I do not know that it would. We could remove the four spaces and put in the extra green space and landscaping, then put a sidewalk in connecting the street to our building entrance. That would change the look of this building to something that would be more pedestrian friendly. With all the required landscaping shown on the plan it looks rather friendly, right now it does look somewhat stark.

Mr. Jefferson said he still feels rather torn about this request. I like the idea of the improvement, but I feel we are all very tentative, given the spirit of this area. I too would ask if you may consider tabling this for the month and perhaps re-discussing this with staff. I would also like to see the redesign of the layout with the required landscaping. I am a visual person and I believe it would be very helpful.

Mr. Fletcher said the landscaping that was shown on an earlier version of their site plan was beyond what the City requires. There was a question of if they are going beyond the requirement and they have proffered the plan, do they intend to do more than the requirement. The applicant was not certain that they would go beyond the requirement; therefore, staff asked them to remove it from the proffered plan and only show what they were willing to proffer beyond what was required.

Mrs. Turner said we did not want something proffered to you that was already a requirement within the zoning regulations.

Mr. Colman said during the public hearing the applicant could have shown a presentation, that was not proffered, with all of the landscaping.

Mrs. Turner said yes, but we would have cautioned you that it was just a presentation, not a condition.

Mr. Hammond said there are a lot of good points brought up tonight. If we were trying to rezone from residential to retail, I think this would be a much more relevant discussion. With this however, you are going from industrial, and what is permitted by right here now, is much worse. This has to be somewhat of a fix. I am certainly willing to do the sidewalk and remove the four spaces if that helps us get there.

Mr. Colman said is that really sufficient, why bring it back again if we are not going to agree to it at a later date.

Mr. Da'Mes said I do not know if it is a matter of the sidewalk and four spaces for me; I am thinking reconfigure the layout. If you come back here with the same general concept I would be right back where I am now.

Chair Fitzgerald said it sounds like the applicant is stating that the building is placed where it is going to be.

Mr. Hammond said yes. It is more of a function of the truck that we use to maneuver on site. Safety issues, building size, entrances, parking spaces, and everything incorporated into this.

Chair Fitzgerald said this is a function of a set of rules that you are bound by with the irregular shape of this lot.

Mr. Hammond said yes it is a triangular lot. Accessibility of the truck onto the lot is the first approval I get from Family Dollar when we start this process.

Chair Fitzgerald said it sounds to me that the issue of trading some parking spaces for a reconfiguration is not likely to happen.

Mr. Hammond said it would increase the green space and the pedestrian friendly look you are going for, but I do not know if it slides the building forward.

Mr. Way said in my mind if the building cannot be moved because of all the requirements that Family Dollar has, then I am probably still going to vote no next time as well. To me it is the location. I do appreciate all of your efforts and I do agree it is an aesthetic improvement over what is there right now. My point is we want to have as best an improvement as we can, not just some type of an improvement.

Mr. Colman said it looks as if there may be potential access from undeveloped Rockingham Drive in order to have an entrance.

Mr. Hammond said we were told early on that it was not an option because of the width of the street, and the fact that it is not developed.

Mr. Fletcher said it is a paper street; a combination of grass and gravel and not maintained by the City. You must remember too that one half of the right-of-way is the bike trail.

Chair Fitzgerald asked if the Planning Commission wanted to move forward with the motion and a vote, given the conversation about where the building is likely to be.

Planning Commission elected to vote on the motion.

Mr. Baugh said I sense how the group is voting and I am voting with them. I do get another vote on this and I think you have raised a lot of interesting points, so I will keep an opened mind on this. I am willing to listen to this further and could conceive of voting on this differently at Council level.

Mr. Colman said can they still bring to Council some of the suggested changes, or not.

Mr. Fletcher said this is what moves forward to City Council. If they make any changes it would need to come back to Planning Commission.

Mrs. Turner said there is a caveat that says if it was a proffer that was discussed at Planning Commission it could be brought to City Council. Therefore, some of these things that were discussed could be moved forward. The particular section reads: "Additional conditions or modified conditions may be proffered by the applicant during or subsequent to the public hearing before the Planning Commission; provided, however, that after proffered conditions are signed and made available for public review and the public hearing before the City Council has been advertised no change or modification to any condition shall be approved without a second advertised public hearing thereon. After the City Council public hearing has been advertised or commenced, should additional or modified conditions be proffered by the applicant, which conditions were discussed at the public hearing before the Planning Commission, then a second public hearing need to be held only before the City Council before the application and the modified conditions can be approved".

If the applicant were to bring up things at City Council that were not addressed here they would have to come back here for another public hearing as well. So they could bring up something that was brought up here, but they would perhaps have to have a second advertised public hearing on it at a subsequent City Council meeting.

Mr. Colman said like the removal of the parking spaces.

Mrs. Turner replied removal of the parking spaces is an entire special use process.

Mr. Baugh said that was part of my thinking; if we tabled it and waited to see if the proposal got revised, among the things they were willing to commit to you could also advertise for the SUP.

Mr. Mike Layman, attorney with Layman and Nichols, said he is present tonight as a representative for Red Front Supermarket. We are thrilled to see this area moving towards removing the blight. What we would like to bring to the forefront is the owners of Red Front and Red Front properties have been trying to accumulate some funds themselves to begin to get involved in this area for a general upgrade. For example, you have some repair shops along the back of this property that really need to go if you want to upgrade the surrounding area. The owners of Red Front have some property for sale in the area for possibly some houses; but if Family Dollar came in here and possibly acquired the property in the back that would then allow them to redesign a layout and solve your concerns as well. The owners of Red Front have not been pushing these issues because the property we have for sale has not sold and so forth. We are thrilled to see this area being looked at. It really needs a change; it sits right between Waterman Elementary School and Eastern Mennonite, it is a critical area that we need to do right by. To any extent that we could help in this process, we are here possibly to get involved along the periphery.

Chair Fitzgerald said thank you and asked if that changed any comments for Planning Commission or are we ready for a vote.

Mr. Colman said if they are interested in discussing with the applicants I would think a tabling would be in order.

Mr. Fletcher asked Mr. Layman to return to the podium and describe which lots he was referring to.

Mr. Layman said I am talking about the bike path area that is part of the roadway behind the proposed Family Dollar. There are several car repair shops along this stretch and these lots are so small you really cannot do much with them. I do not know if this area is even for sale at this time. Red Front is not in the position to go offer funds to purchase this property. We were hoping to upgrade that entire area; this area could be absolutely beautiful. Does this clarify your question?

Mr. Fletcher said perhaps I misunderstood; did you say that Red Front owned parcels somewhere along this area?

Mr. Layman said Red Front owns the property where the store sits, there is a parking lot across the street, and they own a lot behind that parking.

Mr. Colman asked what are you suggesting for adjacent to this property.

Mr. Layman said we were going to begin to look at all the property that looks blighted and to see what could be done. Anything that helps that area also helps Red Front.

Mr. Fletcher said the parcels you are referring to as Red Front property do not show up on this image as directly adjacent to the subject property.

Mr. Layman replied no.

Mr. Fletcher said what you are referring to is Red Front coming together with Family Dollar and jointly doing something for the area as a whole.

Mr. Layman replied yes, to help promote cleaning up this entire blighted area. It would be nice to look at this entire area in a comprehensive way and it would probably solve some of the problems you have with Family Dollar.

Chair Fitzgerald said this is a really interesting piece of information and I am glad you came forward to share it. I am going to ask both parties (Family Dollar and Red Front) if there is any possibility of a conversation here.

Mr. Hammond said there is always the possibility and from what I am hearing is that if something starts to improve the area others may want to make the investment to continue that progress. Again, I am here representing Family Dollar as a single tenant entity; they do not get into buying up surrounding properties. We are expanding rather aggressively right now and what you are talking about would monopolize a lot of resources. I will say one thing, we spent over \$10,000 just on technical studies in this area and we have identified several buildings that we will be demolishing that are filled with asbestos; this is a true beautification project.

Chair Fitzgerald said what I am hearing is that you would prefer that we move forward with consideration of just this issue that is before us now.

Mr. Hammond replied I just could not tie any type of a joint venture into our development. Although, we would be more than happy to talk about some type of long term effort or if some type of access was needed to get into the area; but to condition a development approval on something like this would be very cumbersome.

Chair Fitzgerald asked for the motion to be restated.

Mr. Fletcher said the motion is to recommend denial of the request.

Chair Fitzgerald said if you vote “aye” you are recommending denial. She then called for a roll call vote on the motion.

Commissioner Way – aye

Commissioner Colman – aye

Commissioner Da’Mes – aye

Commissioner Heatwole – aye

Commissioner Baugh – aye

Chair Fitzgerald – aye

Chair Fitzgerald said the motion passes and will move forward to City Council on August 13, 2013.

Zoning Ordinance Amendment – Section 10-3-114(d)

Chair Fitzgerald read the request and asked staff for their review.

Mr. Fletcher said after hearing three variance requests in just over 18 months regarding locating accessory buildings on residential through lots, the Board of Zoning Appeals (BZA) has asked the City to devise an ordinance amendment that would allow residents, who live on through lots, the ability to locate accessory buildings in established rear yards. The BZA feels this is a hardship that is generally shared by many lots in the City and that a change should be made to the Zoning Ordinance. To accommodate the many residents that have this situation an amendment is needed to Section 10-3-114 Accessory Buildings subsection (d) Location in Setbacks in Residential Districts Prohibited.

Although not defined by the Subdivision or Zoning Ordinances, a through lot is commonly known as a parcel of land, within a block, that has two public street frontages. A corner lot is not a through lot. Many of the City’s through lots already have existing dwellings with physically established front and rear yards. When erecting an accessory building, many accessory building designs do not require building permits because they are less than 250 square feet in size, and when a resident understands this they often abide by the general setback regulation of five feet, but do not understand that by City Code they have two “front” yards, and therefore, cannot have an accessory building.

Currently, Section 10-3-114 (d) states: “No accessory building in a residential district shall be located within the existing setback between a principal building and public street.” To completely comprehend the ramifications of this subsection, one must remember that Section 10-3-114 also requires that accessory buildings in residential districts must be located in the rear yard, shall not occupy more than 30 percent of the required rear yard setback, and shall not be located on property not having a principle building or active use. Accessory buildings can be located up to five feet from interior side and rear lot lines. With all of this in mind, also remember that in most residential districts the setback from a public street right-of-way line is 30 feet. Thus, if one resides on a through lot, then Section 10-3-114 means an accessory structure cannot be located on that property.

There are many parcels across the City classified as through lots. Many of these lots are located along Franklin Street and Bruce Street; Community Street and Broad Street; East Market Street and East Elizabeth Street; Virginia Avenue, Sumter Court, and Rockingham Drive; Old South High Street and South High Street; Stonechris Drive and West Market Street; Hartman Drive, Statton Street, and North Dogwood Drive; Chicago Avenue, Lee Street, Stuart Street, and Grant Street;

Sand Trap Lane and Keezletown Road; Gilmer Circle, Kramer Court, and Peach Grove Avenue; and Landon Drive, Dorval Road, and Greendale Road.

To accommodate these residential property owners, the following amendment is proposed to Section 10-3-114:

- (d) *Location in setbacks in residential districts prohibited.* No accessory building in a residential district shall be located within the existing setback between a principal building and public street; except on through lots where an accessory building may be located within the established rear yard between the principal building and a public street and meet principal building setbacks.

As shown, the proposed amendment would grant residential through lot owners the ability to have an accessory building, but it would not give them all of the flexibility afforded to residents on “normal” lots, who can locate such buildings as close as five feet from the property line. Staff’s reasoning for proposing the language as described is to maintain the appearance of public streetscapes.

Generally, staff believes this is good zoning practice and recommends approving the amendment as proposed.

Chair Fitzgerald asked if there were ever an argument about what the established rear yard was.

Mr. Fletcher said usually there is not. You can clearly tell what the established rear yards are in these depictions; the only times that you do not have an established rear yard is if you have a lot that is a through lot and undeveloped. However, we would argue from a staff perspective that there is an established rear yard of that stretch if everyone else has their homes fronting along one section we would view that as the front. Of course any staff decision we might make they could always appeal to the BZA.

Mrs. Turner said you cannot build an accessory building without having the principle building; so once they construct the dwelling you will have an idea of where the established rear yard is. Unless you have one of those homes that has a front door facing a side yard; then we would probably go with what the remainder of the block has as their rear yard.

Chair Fitzgerald asked if there were any questions for staff.

Mr. Colman said thirty-feet is a significant setback, would we consider something less than that; perhaps twenty-feet, with some type of screening or fencing.

Mr. Fletcher said there are situations where the BZA has approved variances for setback as well as location of the building. Staff liked the idea of the thirty-foot setback from the public street. There may be situations where thirty-feet cannot be accommodated and a variance to setback is necessary.

Chair Fitzgerald opened the public hearing and asked if there was anyone wishing to speak in favor of this request. Hearing none, she asked if there was anyone wishing to speak in opposition of the request. Hearing none, she closed the public hearing and asked for discussion or a motion.

Mr. Heatwole moved to recommend approval of the zoning ordinance amendment as worded.

Mr. Da’Mes seconded the motion.

Chair Fitzgerald called for a voice vote.

Mr. Way abstained from the vote because he resides on a through lot.

All voted in favor of the motion to recommend approval (5-0).

Chair Fitzgerald said this will move forward to City Council on August 13, 2013.

Unfinished Business

None.

Public Input

None.

Report of secretary and committees

Mr. Fletcher said staff visited the Maplehurst/JMU area of the City and there were no violations. For the month of July, inspectors will be in the Long Avenue/Norwood Street area.

Mr. Baugh said everything from our lengthy Planning Commission meeting last month was taken up by City Council last night and everything was acted on identically as here with one exception, the Special Use Permit for the Barry Kelly parking lot/garage. The alley closing and the rezoning requests were approved; but, the SUP was bifurcated and was approved for the parking lot. We tabled the parking garage portion of the request and asked staff to report back at the next meeting on the parking deck/garage issue. In general we asked all parties involved to go back and spend some time trying to see if there is anything the developer might propose or self-imposed limitations. Some type of opportunity to do this in a timely manner. We have not rejected the request, just asked for the extra time and thoughts. Also, Mr. Blatt, who represented some of the adjoining property owners, actually had some specific proposals at last night's meeting and while I do not know that those proposals may not be adopted it does give some time to react to those proposals.

Mr. Way said he had a report from Rockingham County Planning Commission. They are working on a lot of zoning ordinance amendments and updates that are engaged with their sign ordinance, water and sewer matters, and other technical work on the ordinance. There were some interesting concerns expressed about suburbanization around the City, which I thought were quite interesting.

Other Matters

Mr. Fletcher said there is one item on next month's agenda. It is the closing of the remnant portion of Collicello Street for the North Collicello project. I believe that telecommunications will also be on the agenda.

Mr. Colman said I have a question about lots in a subdivision. My lot has four 15 foot wide lots and I would like for us to figure out a way to bring those lots into compliance. Perhaps when the property is being sold or resubdivided. If you do not clean this up then you can change the density of a neighborhood if everyone can build a house on each 15 foot lot. Is this something we can look into?

In Sunset Heights we have all these 15 and 25 foot lots where each house is constructed on three to five lots. It seems that there are also some empty lots that are being constructed on, which changes the density of the street; this happened on my street next to Charlie Chenault's house. What I would like to propose is that we revise that area in terms of when property is being sold all the property lines are vacated and turned into one lot. And if it is going to be subdivided it needs to comply with current regulations.

Mrs. Turner said the specific case where you are discussing is next to Mr. Chenault's house. Therefore you are saying, when Mr. Chenault bought his house he should have been required to erase his internal lots lines; however, he chose not to purchase the two extra lots next to him.

Mr. Colman said then whoever owned that property should not have been allowed to take those two lots and sell them if they were not compliant with today's regulations. All those lots belonged to the one house and should have been vacated.

Mrs. Turner said I believe that is not possible to do. We will discuss it with the City Attorney, but I am pretty sure it is absolutely not something we can do.

Mr. Baugh said there are many things you can do with the rules, but the idea of mandating a vacation of lines to create larger lots I doubt is something you can do.

Mr. Colman said I believe I understand. I have three lots that my house sits across and I would have been fine with the requirement to vacate all the interior lot lines and create one lot. But, I understand if I have additional property beyond where my house sits, I cannot force anyone to vacate property lines and add it to the house property.

Mrs. Turner replied that is correct.

Mr. Baugh said as the owner you can chose to vacate or adjust property lines however you may want to; but the concept of the government requiring you to do so is probably not something we can do.

Mr. Fletcher said there are times when improvements are made to property that we do request interior lines to be vacated. We require property owners to vacate property lines if they are constructing an addition, or building over a property line. If there are six lots and they want to move property lines to create new buildable lots, they have to meet certain standards of widths and depths. We do have situations where we make it more compliant, but those things do not need to come through Planning Commission.

Mr. Colman asked if you could further divide these lots.

Mr. Fletcher said that is a whole different set of regulations.

Mrs. Turner said if you have a 50 foot lot we would not allow you to divide it into two 25 foot lots.

Chair Fitzgerald asked if there was anything else.

Mr. Way said it was announced at City Council last night about the potential for a park in the Municipal Lot area. I do not know how much will be coming through the Planning Commission, but I am on the Plan Our Park Committee and we have a design team chosen. There are some really interesting and exciting plans coming forward, I am trying to encourage the team to consult with us and especially with Council. There may be some things coming forward in the future regarding this, perhaps a resolution of support or something similar.

Mr. Da'Mes asked about public input.

Mr. Way said there will be a public input period, I do not remember exactly the times, but it is a very community engaged process. It is actually very exciting and I am looking forward to working on this project.

Adjournment

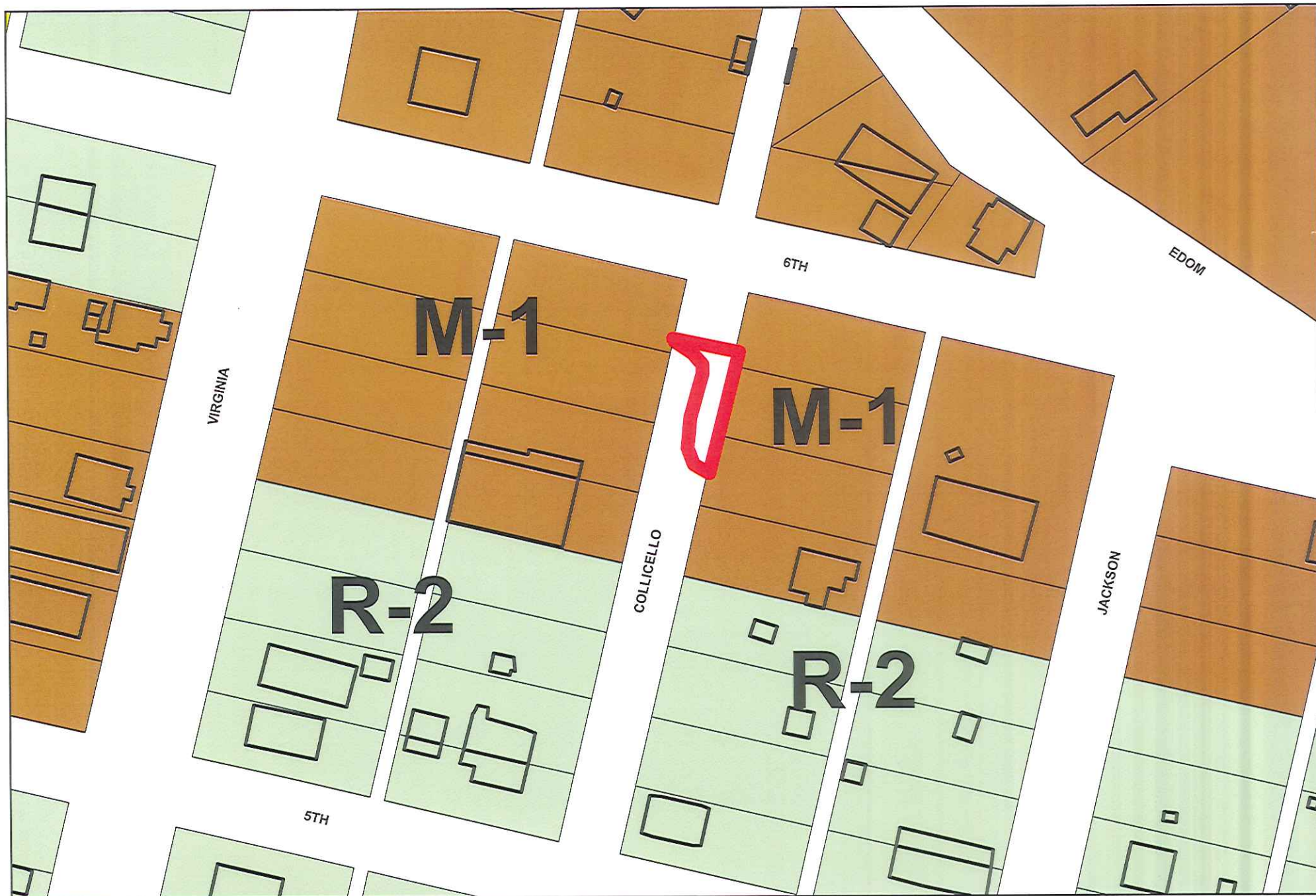
The meeting was adjourned at 8:50 p.m.



SCALE: 1" = 4000 FT.



CITY OF HARRISONBURG
Street Right-Of-Way Closing
Kin Group, LLC
Collicello North Project
Adjacent to Tax Map Parcels 40-H-8
and 40-I-14, 15, & 16
1,557 +/- sq. ft
LOCATION MAP



Street Closing - The Kin Group, LLC
1,557 sq. ft. portion of undeveloped Collicello St. ROW



City of Harrisonburg, Virginia

DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

STAFF REPORT

August 14, 2013

ALLEY CLOSING – 1,557 SQUARE FOOT AREA STREET CLOSING KIN GROUP, LLC

GENERAL INFORMATION

- Applicant:** Kin Group, LLC with representative Dean Weaver
- Tax Map:** Adjacent to 40-H-8 and 40-I-14, 15, & 16
- Acreage:** 1, 557 +/- square feet
- Location:** Undeveloped Collicello Street right-of-way between 5th Street and undeveloped 6th Street right-of-way
- Request:** Consider a request to close an undeveloped portion of Collicello Street.

The following land uses are located on and adjacent to the property:

- Site:** Undeveloped Collicello Street right-of-way, adjacent to property zoned R-7
- North:** Undeveloped Collicello Street and undeveloped 6th Street recently approved for closure and to become zoned R-7 when purchased by the applicant
- East:** Undeveloped property, zoned R-7
- South:** Undeveloped Collicello Street
- West:** Undeveloped Collicello Street and undeveloped property, zoned R-7

EVALUATION

Kin Group, LLC is requesting to close a 1,557 +/- square foot portion of undeveloped Collicello Street right-of-way (ROW) located in the block between 5th Street and undeveloped 6th Street. The applicant owns all adjoining properties, which are now zoned R-7, Medium Density Mixed Residential Planned Community District. If closed, the undeveloped ROW would become part of the R-7 master plan.

The applicant is the same entity that has been to Planning Commission and City Council on three separate occasions to make way for an R-7 development. In June 2012, the applicant requested to close a 3,000 square foot undeveloped portion of a public alley located between 5th Street and undeveloped 6th Street. Then, in February of this year, the applicant requested to close over 33,000 square feet of undeveloped portions of Collicello Street, undeveloped 6th Street, and undeveloped ROW near Edom Road. Finally, in June, the applicant requested to rezone almost three acres of property, which included the undeveloped public ROW areas as described above, to the R-7 district. Planning Commission recommended in favor of, and City Council approved, all three requests.

During the rezoning request process, it was explained that Kin Group, LLC would return to Planning Commission and City Council to request closure of this 1,557 square foot undeveloped ROW as this area is planned to contain a significant retaining wall, which is important to the road design. The

subject area is also the location of a portion of the shared use path that would connect bicyclists and pedestrians from Collicello Street to Edom Road and vice versa.

As has been known throughout the planning of this development, Columbia Gas has a six inch pipeline located in the Collicello Street ROW. This gas line runs through portions of the subject area herein described. The City will retain an easement for Columbia Gas prior to closing the ROW and it will be the responsibility of the applicant to accurately identify the location of the infrastructure and to work with Columbia Gas to identify on a plat where easements shall be located. The applicant has been aware of this situation for some time and has already been communicating with Columbia Gas regarding this matter.

There are no public water or sewer lines within the subject areas, the areas are not used for trash pick-up, and the City is not interested in maintaining ownership of this section of the ROW.

With the easement as described, staff recommends closing this portion of undeveloped Collicello Street.

June 28, 2013

Adam Fletcher,

I would like to have a small residual piece of land vacated that is located within the existing 39' Collicello Street R.O.W. I would then like to acquire the vacated piece and incorporate into Collicello North, a proposed master planned R-7 community. Because of sequential events which caused modifications to our original proposal, this residual piece was left behind in our first round of purchasing parts of the 6th Street and Collicello Street ROW's. As Kin Group is the only adjacent land owner to this small area, I request that that this area be vacated so that I am able to absorb this parcel into our proposed Collicello North community.

Sincerely,

A handwritten signature in dark ink, appearing to read 'D. M. W.', with a long horizontal flourish extending to the right.

Dean Weaver

Operating Partner, Kin Group LLC.

Date application received: 06-28-13

Application for Street or Alley Closing City of Harrisonburg, Virginia

Review fee: \$50.00 Board of Viewers appointment (\$50.00 each): \$ Total Paid: \$

Applicant's name: Kin Group, LLC Attn: Dean Weaver

Street address: 5782 Greenhill Road Email:

City: Linville State: VA Zip: 22834

Telephone: Work Fax Mobile 540-810-7337

Representative (if any): Blackwell Engineering, LLC

Street address: 566 East Market St Email:

City: Harrisonburg State: VA Zip: 22801

Telephone: Work 432-9555 Fax 434-7604 Mobile

Description of Request

Location: Portion of undeveloped Collicello St. on Tax Map 40. Sections

I 14-16 and H 6-8 (see attached Street Closing Plan).

Square footage of area to be closed: 1557 sf

Cost per square foot: \$ 3.75 to 4.00 Total cost: \$5,838.75 to \$6,228.00

Please provide a detailed description of the proposed closure (additional pages may be attached):

A 1557 square foot portion of undeveloped Collicello St.

Names and addresses of adjacent property owners (Use separate sheet for additional names)

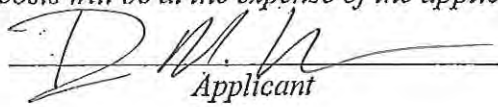
North: Kin Group, LLC

South: Kin Group, LLC

East: Kin Group, LLC

West: Kin Group, LLC

I hereby certify that it is my intention to have the above described Street(s) or Alley(s) closed and that the information contained herein is true and accurate. In addition, I understand that all required advertising and associated costs will be at the expense of the applicant.

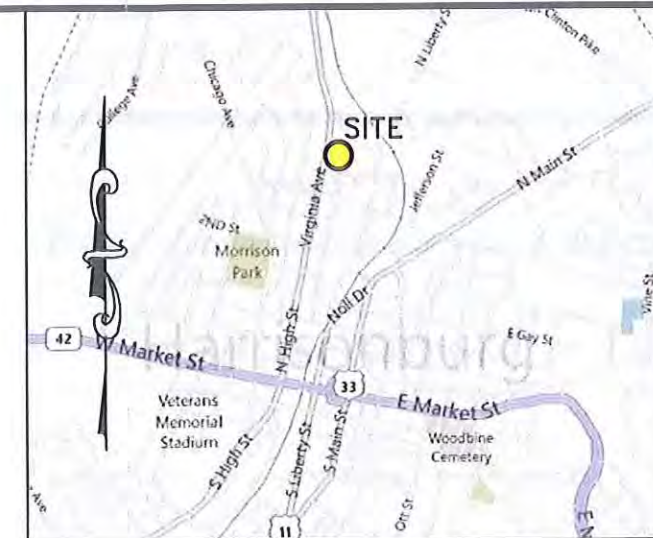
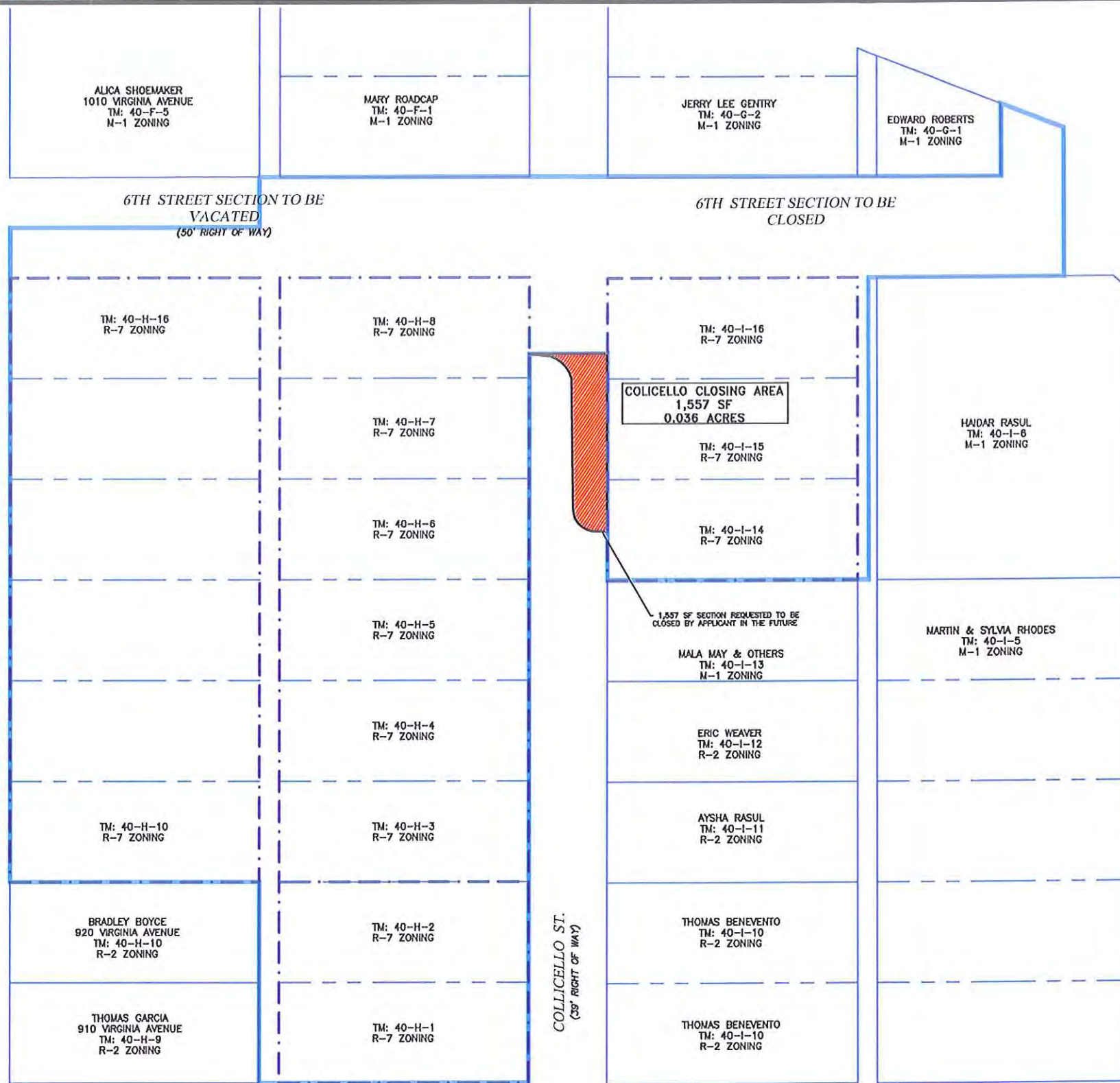
Signature: 
Applicant

6/28/13
Date

ITEMS REQUIRED FOR SUBMISSION

- | | |
|--|---|
| <input checked="" type="checkbox"/> Completed application | <input checked="" type="checkbox"/> Value per square foot of cost to purchase |
| <input type="checkbox"/> Letter describing proposed use | <input checked="" type="checkbox"/> Fees paid |
| <input type="checkbox"/> Adjacent property owners | <input type="checkbox"/> <u></u> |
| <input checked="" type="checkbox"/> Survey & metes and bounds description (prepared by a surveyor, engineer, or other person duly authorized by the State) | |

Please be advised, adjoining property owners shall be expected to buy that portion of the street/alley which abuts their property before second reading and final closing! The cost shall be at fair market value determined by the Commissioner of Revenue.



VICINITY MAP
SCALE: 1" = 2,000'

LEGEND

- CENTER LINE
- E/T ELECTRIC/TELEPHONE
- UTILITY POLE
- W WATER LINES
- S SANITARY LINES
- CS-6 TRCO SANITARY SEWER CLEANOUT TRAFFIC RATED CLEANOUT
- STORM SYSTEM
- G GAS LINES
- EXISTING PROPERTY LINE
- PROPERTY OWNED BY KIN GROUP, LLC
- SETBACK LINE
- EASEMENT LINE
- PROPOSED ROAD/EOP
- EXISTING ROAD
- CURBING: CG-2 OR CG-6
- WATER METER
- FIRE HYDRANT
- COLICELLO STREET PURCHASE/CLOSING

PURCHASER:
KIN GROUP, LLC
ATTN: DEAN WEAVER
5782 GREENHILL ROAD
LINVILLE, VA 22834
540-810-7337

PROPERTY INFO:
TAX MAP 40-H-6-8
40-I-14-16
COLICELLO STREET= 0.036 ACRES
ZONED: R-7
USE: VACANT
FEMA FLOOD ZONE X

SITE SURVEY:
SIMMONS SURVEYING
JEFF SIMMONS
1061 S HIGH ST.
HARRISONBURG, VA 22801
540-432-0420

NOTES:
1. The Kin Group, LLC is in the process of planning a small housing community and a re-subdivision as shown. The street will be incorporated into this project.

NOT TO SCALE

BLACKWELL ENGINEERING, PLC
566 East Market Street
Harrisonburg, Virginia 22801
Phone: (540) 432-9555 BE@BlackwellEngineering.com Fax: (540) 434-7604

Date: JULY 2013

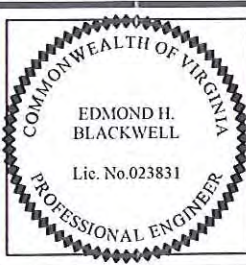
Revision Date

Designed by: _____

Scale: AS SHOWN

Drawn by: JRC

Job No. 2266



STREET CLOSING PLAN

COLLICELLO NORTH
KIN GROUP, LLC
5782 GREENHILL ROAD
LINVILLE, VA 22834

Drawing No.

1

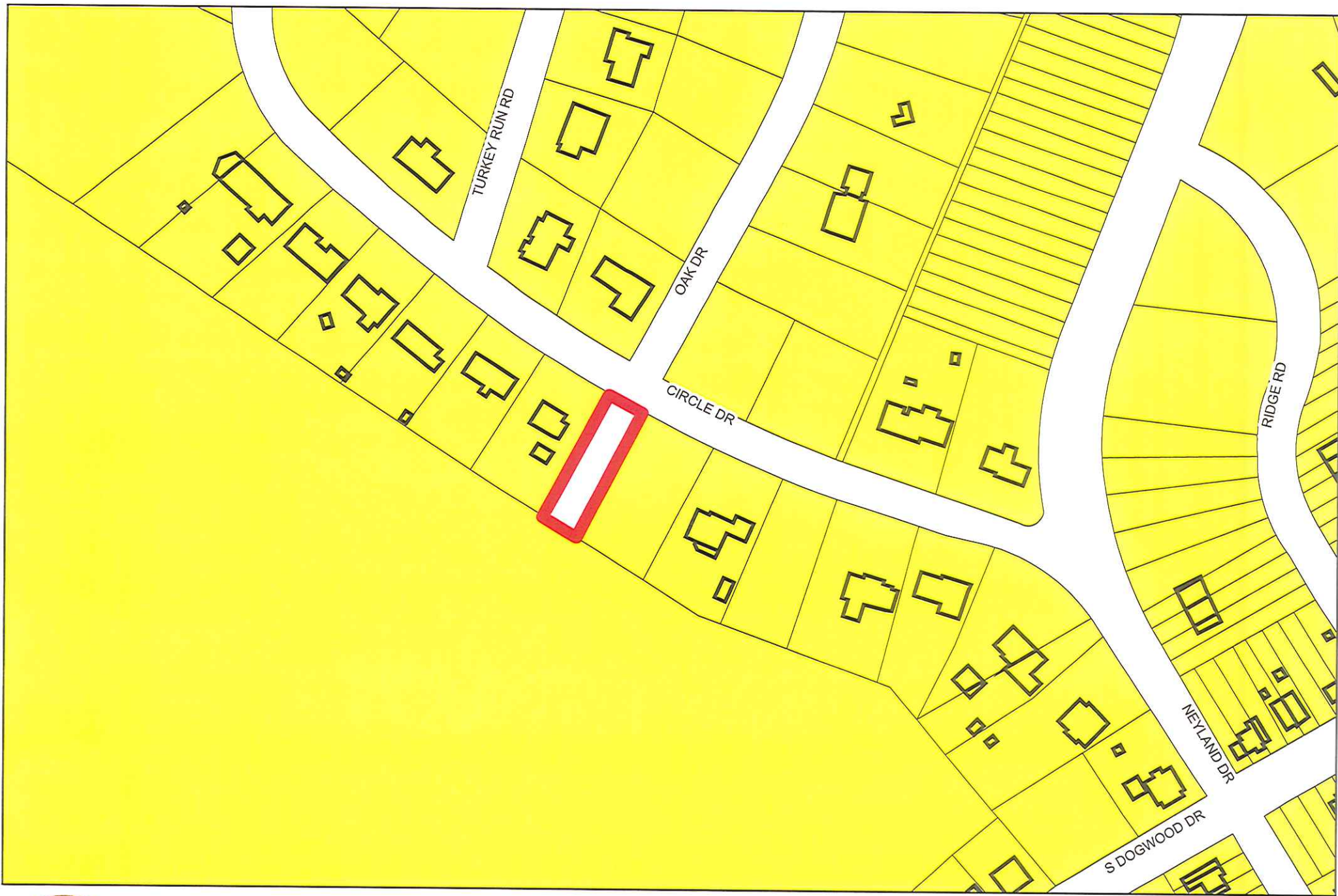
of 1 Sheets



SCALE: 1" = 4000 FT.



CITY OF HARRISONBURG
Street Right-Of-Way Closing
for Shared Use Path
Location Agreement
Undeveloped Oak Drive
Between 22-E-9 and 22-F-8
9,386 +/- sq. ft
LOCATION MAP



Street Right-Of-Way Closing Undeveloped Oak Drive (Between 22-E-9 and 22-F-8)



City of Harrisonburg, Virginia

DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

STAFF REPORT

August 14, 2013

ALLEY CLOSING – UNDEVELOPED OAK DRIVE (BETWEEN 22-E-9 & 22-F-8)

GENERAL INFORMATION

Applicant: City of Harrisonburg
Tax Map: Between 22-E-9 and 22-F-8 and adjacent to 20-H-1
Acreage: 9,386 +/- sq. ft.
Location: Undeveloped Oak Drive located adjacent to and east of 711 Circle Drive
Request: Consider a request to close a 50-foot wide by approximately 190-foot in length section of undeveloped Oak Drive.

The following land uses are located on and adjacent to the property:

Site: Undeveloped Oak Drive right-of-way, adjacent to property zoned R-1
North: Across Circle Drive, the continuation of undeveloped Oak Drive and single family homes, zoned R-1
East: Undeveloped parcel, zoned R-1
South: City of Harrisonburg's Rocktown Trails at Hillandale Park, zoned R-1
West: Single family home, zoned R-1

EVALUATION

The City is proposing to close a 9,386 +/- square foot portion of Oak Drive—an undeveloped public street right-of-way (ROW) located off of Circle Drive. Oak Drive was platted in Rockingham County as Conrad's Addition as Part of Sunset Heights and did not become part of the City until the 1983 annexation. No part of Oak Drive has ever been constructed. The section to be closed is 50-feet wide extending approximately 190-feet in length south from Circle Drive toward the City's Rocktown Trails at Hillandale Park property.

Knowing the City has never had plans to construct this section of Oak Drive, the Bicycle and Pedestrian Subcommittee—a subcommittee of the Harrisonburg Transportation Safety Advisory Commission—has discussed for sometime using this area as a possible access point into Rocktown Trails. After adjoining property owners expressed concerns about the use of this section as an officially recognized access to the trail system, and after Bicycle and Pedestrian Subcommittee members evaluated the site and determined a nearby location to be a better spot to create an access point, the City made an agreement with adjacent property owners to close this ROW and establish a new, smaller ROW more than 50 feet to the east. The new location will be more suitable for trail users while at the same time being sensitive to the privacy of the adjacent property owners. The new ROW would be 20-

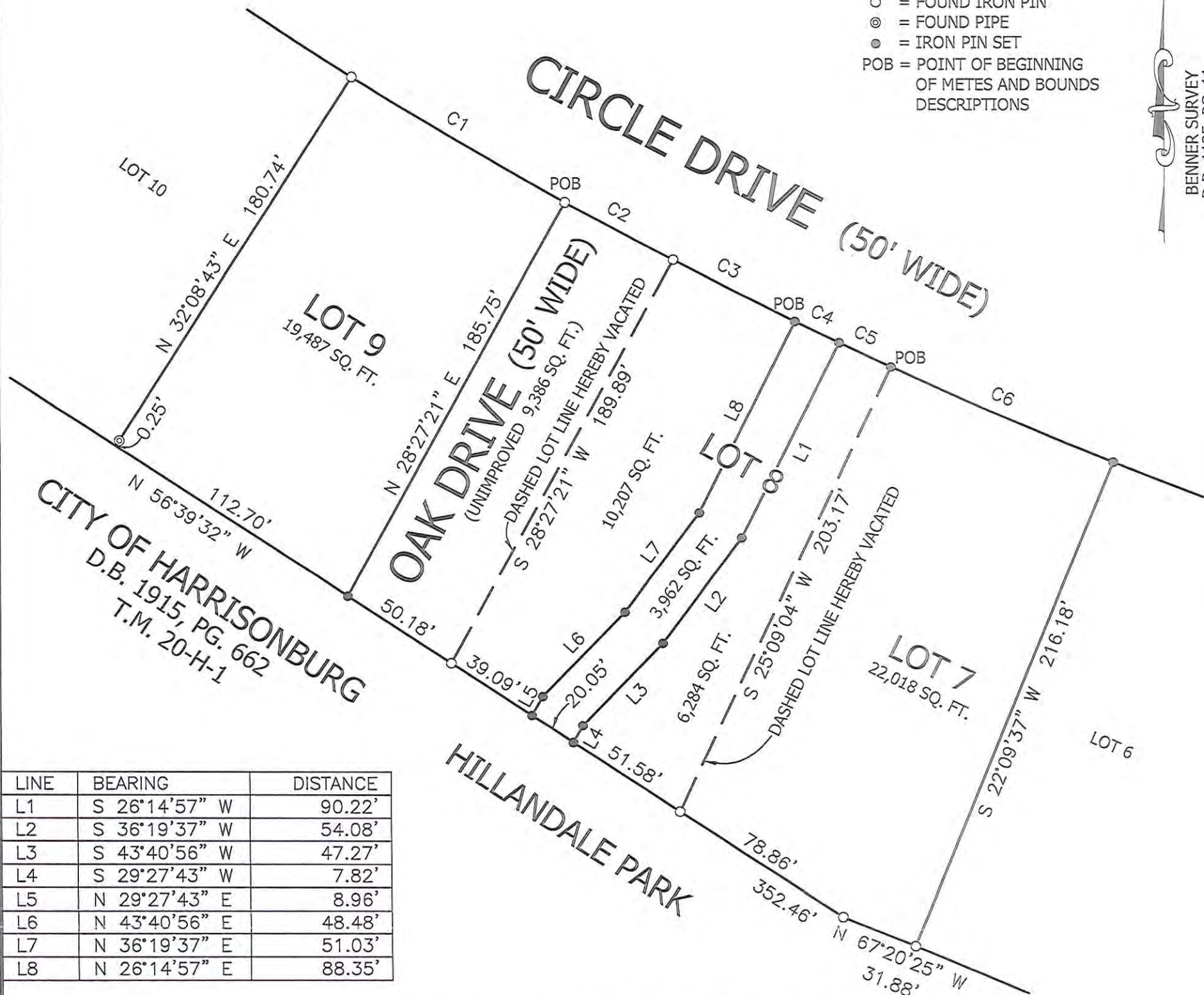
feet in width stretching about the same distance and would be constructed as a shared use path for individuals to access the mountain biking trails from this neighborhood and vice versa.

There are no public water or sewer lines within the Oak Drive ROW, it is not used for trash pick-up, and there are no private utilities within the undeveloped street ROW; therefore, no easements need to be retained.

Staff recommends closing the 9,386 square foot portion of undeveloped Oak Drive.

- = FOUND IRON PIN
⊙ = FOUND PIPE
● = IRON PIN SET
POB = POINT OF BEGINNING
OF METES AND BOUNDS
DESCRIPTIONS

BENNER SURVEY
D.B. 1135, PG. 11



LINE	BEARING	DISTANCE
L1	S 26°14'57" W	90.22'
L2	S 36°19'37" W	54.08'
L3	S 43°40'56" W	47.27'
L4	S 29°27'43" W	7.82'
L5	N 29°27'43" E	8.96'
L6	N 43°40'56" E	48.48'
L7	N 36°19'37" E	51.03'
L8	N 26°14'57" E	88.35'

CURVE	DELTA ANGLE	RADIUS	ARC LENGTH	CHORD BEARING	CHORD LENGTH
C1	2°59'15"	1932.40'	100.76'	S 59°08'52" E	100.75'
C2	1°28'57"	1932.40'	50.00'	S 61°22'58" E	50.00'
C3	1°38'38"	1932.40'	55.44'	S 62°56'45" E	55.44'
C4	0°35'35"	1932.40'	20.00'	S 64°03'52" E	20.00'
C5	0°41'20"	1932.40'	23.23'	S 64°42'19" E	23.23'
C6	2°55'33"	1932.40'	98.68'	S 66°30'46" E	98.67'

TITLE INFORMATION

LOT 7 : T.M. 22-F-7, D.B. 4097, PG. 61, OWNERS: JONATHAN B. GIBSON & JENNIFER S. GIBSON
LOT 8 : T.M. 22-F-8, D.B. 4088, PG. 56, OWNERS: MAURIZIO V. ANTONNICOLA & SHEILA O. ANTONNICOLA
LOT 9 : T.M. 22-E-9, D.B. 3318, PG. 595, OWNERS: MAURIZIO V. ANTONNICOLA & SHEILA M. ANTONNICOLA
OAK DRIVE OWNER: CITY OF HARRISONBURG BY VIRTUE OF THE DEDICATION IN D.B. 294, PG. 486

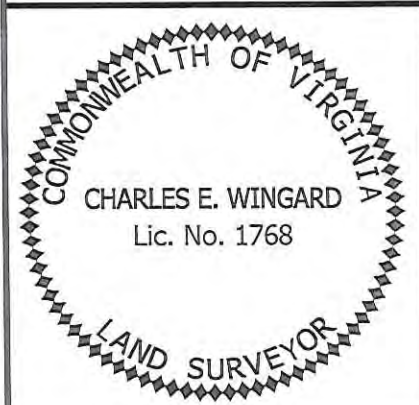
CONVEYANCE NOTES

THE 6,284 SQ. FT. PORTION OF LOT 8 IS TO BE CONVEYED TO THE GIBSONS AND COMBINED WITH LOT 7.
THE 3,962 SQ. FT. PORTION OF LOT 8 IS TO BE CONVEYED TO THE CITY OF HARRISONBURG FOR ACCESS TO HILLDALE PARK.
THE 9,386 SQ. FT. PORTION OF OAK DRIVE IS TO BE CONVEYED TO THE ANTONNICOLAS AND WILL BE COMBINED WITH THE 10,207 SQ. FT. RESIDUE OF LOT 8.

CERTIFICATION

THIS SUBDIVISION KNOWN AS "MINOR SUBDIVISION PLAT OF LOTS 7, 8 & 9 AND A PORTION OF OAK DRIVE IN CONRAD'S SUBDIVISION OF PART OF SUNSET HEIGHTS ADDITION (D.B. 294, PG. 486)" IS APPROVED BY THE UNDERSIGNED PURSUANT TO SECTION 10-2-8 OF THE HARRISONBURG CITY CODE AND MAY BE ADMITTED TO RECORD.

DATED: _____ DIRECTOR OF PLANNING AND COMMUNITY DEVELOPMENT



MINOR SUBDIVISION PLAT
OF LOTS 7, 8 & 9
AND A PORTION OF OAK DRIVE
IN CONRAD'S SUBDIVISION OF
PART OF SUNSET HEIGHTS ADDITION
(D.B. 294, PG. 486)
CITY OF HARRISONBURG, VIRGINIA

SCALE: 1" = 50'		
DRAWN BY		DATE
CEW		JULY 1, 2013
SHEET	BLOCK	LOT
22	E	9
22	F	7 & 8
DIVISION OF ENGINEERING CITY OF HARRISONBURG 409 SOUTH MAIN STREET HARRISONBURG, VA 22801		

OAK DRIVE
PROJECT #
1212



July 2013 Proactive-Zoning Report

For the month of July 2013 the proactive-zoning program inspected the **Long Ave/Norwood** section of the city. During the proactive inspections eleven violations were found. The violations consisted of tall grass and weeds, inoperable vehicles, and discarded material violations.

MONTH	SECTOR	4 th CYCLE VIOLATIONS	CORRECTED	1 st CYCLE	2 nd CYCLE	3rd CYCLE
December 2011	Wyndham Woods	2	2	2	0	4
January 2012	Northfield	13	13	21	6	19
February 2012	Purcell Park	8	8	7	6	5
March 2012	Parkview	5	5	19	7	16
April 2012	Ind./Tech Park	0	0	0	1	0
May 2012	Northeast	29	29	80	45	63
June 2012	Exit 243	1	1	10	0	1
July 2012	Fairway Hills	2	2	1	0	0
August 2012	Smithland Rd.	2	2	0	4	0
September 2012	N. Main St.	10	10	13	4	4
October 2012	Liberty St.	11	11	6	4	18
November 2012	Westover	13	13	18	8	17
December 2012	Garbers Church	9	9	1	2	1
January 2013	Spotswood Acres	8	8	6	4	1
February 2013	Jefferson St.	21	21	26	22	35
March 2013	Forest Hills/JMU	1	1	6	1	1
April 2013	S. Main St.	5	5	1	0	2
May 2013	Hillandale	11	11	7	5	17
June 2013	Maplehurst/JMU	0	0	6	5	2
July 2013	Long Ave/Norwood	11	n/a	12	28	17
August 2013	Greystone			13	10	13
September 2013	Greendale/SE			3	2	5
October 2013	Ramblewood			4	8	1
November 2013	Stone Spring Village/JMU			2	10	0
December 2013	Sunset Heights			7	29	10
January 2014	Reherd Acres			10	12	9
February 2014	RT 33 West			0	16	6
March 2014	Chicago Ave			16	22	29
April 2014	Pleasant Hill			4	13	17
May 2014	Avalon Woods			7	26	11
June 2014	Waterman Elementary			6	61	18
July 2014	Keister Elem			6	5	8
August 2014	500-600 S. Main			7	30	16
September 2014	Court Square			0	3	2
October 2014	Bluestone Hills & Valley Mall			3	33	31
November 2014	Preston Heights			8	3	1

The proactive-zoning program for August 2013 will be directed towards the enforcement of the Zoning Ordinance in the **Greystone** section of the City.



City of Harrisonburg

Department of Planning and Community Development

409 South Main Street
Harrisonburg, Virginia 22801
540-432-7700

www.harrisonburgva.gov/community-development

Memorandum

To: Harrisonburg Planning Commission
From: Adam Fletcher City Planner
RE: Considering Amendments for Telecommunications Regulations
Date: Wednesday, August 14, 2013

Staff has completed its research regarding whether the City's telecommunications regulations should be amended. The result of this work is a comprehensive document, which, as described in the Introduction of the report, explains why the City is investigating telecommunications regulations; what authority the City has in regulating telecommunications; a section describing example regulations; and information about recent and future telecommunication practices that should be understood when considering legislation. The report also includes two appendices consisting of the January 12, 2012 report regarding the City's existing telecommunications regulations as well as an inventory of telecommunications facility locations in the City. Finally, the conclusion of the report includes staff's recommendations for moving forward.

The report was provided to and has already been reviewed by several telecommunication industry representatives from AT&T, NTelos, Shentel, Verizon Wireless, and to two private contractors. The roles of the individuals are diverse and include: the regional General Attorney or other attorneys of major carriers, Real Estate Manager, Site Acquisition Manager, Remote Access Network or RAN Engineer/Strategic Planner, Leasing Coordinator, and Private Contractor. Aside from one private contractor, as of yesterday, staff has received feedback from all of its contacts and will soon review this information and provide it to you as soon as possible.

Please review the report herein and the industry representative comments, once they are provided to you, all by next month's regular meeting on September 11th. The Commission can discuss all of the information and determine how to move forward.



City of Harrisonburg, Virginia

DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

STAFF REPORT

August 14, 2013

Considering Amendments for Telecommunications Regulations

I. Introduction

The information herein is the result of research and study staff has conducted since January 2012 to assist in deciding whether the City should revise its telecommunications regulations. The document includes an explanation as to why the City is investigating telecommunications regulations; what authority the City has in regulating telecommunications; a section describing example regulations; and information about recent and future telecommunication practices that should be understood when considering legislation. Appendices include current City telecommunications regulations and reported FCC regulated telecommunication facility locations in the City. The question to answer is to what extent, if any, should the City Code be updated and amended to further address land use issues involving telecommunications facilities. Staff recommendations are provided in the conclusion of this report.

For the purposes of this document, “telecommunications” shall refer to mobile device services infrastructure such as towers, antennas, panels, dishes, cabinets, and related pieces of equipment that are erected, or mounted to buildings and other structures, to provide service to personal wireless services facilities technology. Such technology includes but is not limited to personal communication services (PCS) (including cellular phones), smart phones, lap top computers, tablet computers, and other similar devices that use the wireless system authorized and controlled by the Federal Communications Commission (FCC) and further managed by the FCC’s Wireless Telecommunications Bureau (WTB).

II. Why is the City Investigating Telecommunications Regulations?

In the past, the City has discussed the idea of adopting new telecommunications controls and regulations to address the ever-changing wireless technology demand. In fact, the idea of adopting more specific telecommunications regulations goes back to 1996 when the City dealt with its first telecommunications request at 1178 South High Street.

The year 1996 is significant for a few reasons. First, on February 8, 1996, President Bill Clinton signed into law the Telecommunications Act of 1996; along with many other things, this legislation granted local governments the authority to regulate telecommunications. At the same time, the City was already working on a comprehensive rewrite of the Zoning Ordinance, and with the adoption of the Telecommunications Act of 1996, the City incorporated relatively basic regulations to govern telecommunications (for the most part, those provisions are the same regulations that remain in place today). The City adopted the revamped Zoning Ordinance on

April 23, 1996. Then, in September 1996, the City reviewed its first telecommunications request to locate equipment on the top of the water tower at 1178 South High Street. During the hearing for the telecommunications special use permit (SUP) request, which was ultimately approved in October, City Council, staff, and City residents discussed the idea of instituting a study on communications towers and to consider things that might need to be changed in the City's existing ordinance dealing with telecommunications. During much of 1996 and 1997, Planning staff conducted a significant amount of research regarding how the City could implement telecommunications regulations. Staff attended regional workshops, communicated often with carriers and providers, and researched and studied how other localities from across the country were implementing the regulatory power granted by the Telecommunications Act of 1996. When much of the research ended in 1997, the regulations that were adopted during the Zoning Ordinance rewrite remained in place.

Since 1996, other public hearings similar to the 1178 South High Street example have sparked discussion on whether the City should adopt additional regulations for telecommunications, but other than discussing this idea and collecting and reviewing examples from other localities, the idea was never pressed and staff ended up working on other matters.

In November 2011, however, this idea was again resurrected during discussion involving a SUP to allow a 124-foot in height telecommunications tower at 1106 Reservoir Street. Planning Commission held a public hearing to review the SUP request on the B-2 zoned property, where in brief, opinions differed regarding whether the SUP should be approved. Even though staff understood that such infrastructure was needed to provide stronger signal strength, capacity and connectivity to that area and generally to the entire City, staff recommended denial of the request believing that such a use would be incompatible with the uses in the surrounding area. Furthermore, staff interpreted that the use was not conforming to the Comprehensive Plan's long term goals for this area of the City. Planning Commission, however, voted 3-2 (with 2 members absent) in favor of recommending approval of the request with conditions that were suggested by staff. During the meeting, the Commission advised staff to evaluate the City's existing regulations and questioned whether the City should do more research regarding more controls and regulations for telecommunications.

In December 2011, City Council held their public hearing regarding the request and ultimately approved the application as suggested by Planning Commission with a 4-1 vote. During this meeting, Council Member David Wiens noted he would like City Council to ask Planning Commission to develop a plan of provisions for collocations. In addition, Council Member Charlie Chenault (also a member of the Planning Commission at that time) noted that Planning Commission spoke briefly about the need of a separate ordinance specifically for telecommunications towers and mentioned the Commission would visit the issue in the future.

Subsequent to the City Council meeting, staff prepared a report that discussed the City's current zoning regulations regarding telecommunications and presented the information to Planning Commission at their January 2012 regular meeting. That report, titled Current Zoning Regulations Regarding Telecommunications, explains which zoning districts allow telecommunications and how they are regulated. The described report provides other detailed information and is included as Appendix A. Table 1 below is a summary of some of the information in that report.

Table 1: Summary of Where and How Telecommunications Are Allowed in the City

Zoning Districts Permitting Telecommunications	Telecommunications Permitted By-Right	Telecommunications Permitted By Special Use Permit
R-1	Not permitted.	Communications facilities necessary for public safety purposes up to 200 feet in height (private collocations are permitted).
R-2	Not permitted.	Communications facilities necessary for public safety purposes up to 200 feet in height (private collocations are permitted).
R-3 Multiple Dwelling and Medium Density	Not permitted.	Communications facilities necessary for public safety purposes up to 200 feet in height (private collocations are permitted).
R-4	Not permitted.	Communications facilities necessary for public safety purposes up to 200 feet in height (private collocations are permitted).
R-5	Not permitted.	Not permitted.
R-6	Not permitted.	Not permitted.
R-7	Not permitted.	Not permitted.
U-R	Not permitted.	Communications facilities necessary for public safety purposes up to 200 feet in height (private collocations are permitted).
MX-U	Not permitted.	Not permitted.
B-1	Telecommunications equipment and facilities, provided such equipment and facilities are located in an enclosed structure (at no more than 75 feet in height).	Telecommunications equipment and facilities not located in an enclosed structure and communications facilities necessary for public safety purposes up to 200 feet in height (private collocations are permitted).
B-2	Not permitted.	Communications towers no more than one hundred twenty-five (125) feet in height and Communications facilities necessary for public safety purposes up to 200 feet in height (private collocations are permitted).
M-1	Communications towers not more than one hundred twenty-five (125) feet in height .	Communications towers more than one hundred twenty-five (125) feet in height and communications facilities necessary for public safety purposes up to 200 feet in height (private collocations are permitted).

***Note: Any City use, determined to be a public use, is permitted by-right in any zoning district.**

During the January 2012 Planning Commission meeting, after reviewing and discussing the report within Appendix A, the Commission advised staff to investigate the options involving telecommunications regulations and offered specific investigatory objectives including:

researching other locality regulations, talking to telecommunications providers about the technology and future technology of telecommunications and the infrastructure necessary to support it, and researching available resources through the Virginia Municipal League (VML). There was also interest in researching regulations that would encourage collocations by-right and decommissioning of infrastructure.

Staff began researching information and writing this document throughout 2012, however other issues arose (among other things the business garden proposal) that slowed the progression of this project. In February 2013 after Planning Commission acted on the business garden proposal, the Commission advised staff to make the telecommunications regulations project a priority rather than focusing efforts on researching and drafting additional agricultural/horticultural regulations or investigating new or revised ordinances associated with accessory structures, which was an issue that had received public attention at that time.

III. What Authority Does the City Have in Regulating Telecommunications?

Before discussing the various options for telecommunications regulations, it is best to understand what authority the City has in regulating them. This authority is primarily outlined within the Telecommunications Act of 1996 with other regulatory provisions included within the recently adopted Middle Class Tax Relief and Job Creation Act of 2012 Section 6409 Wireless Facilities Deployment.

The Telecommunications Act of 1996

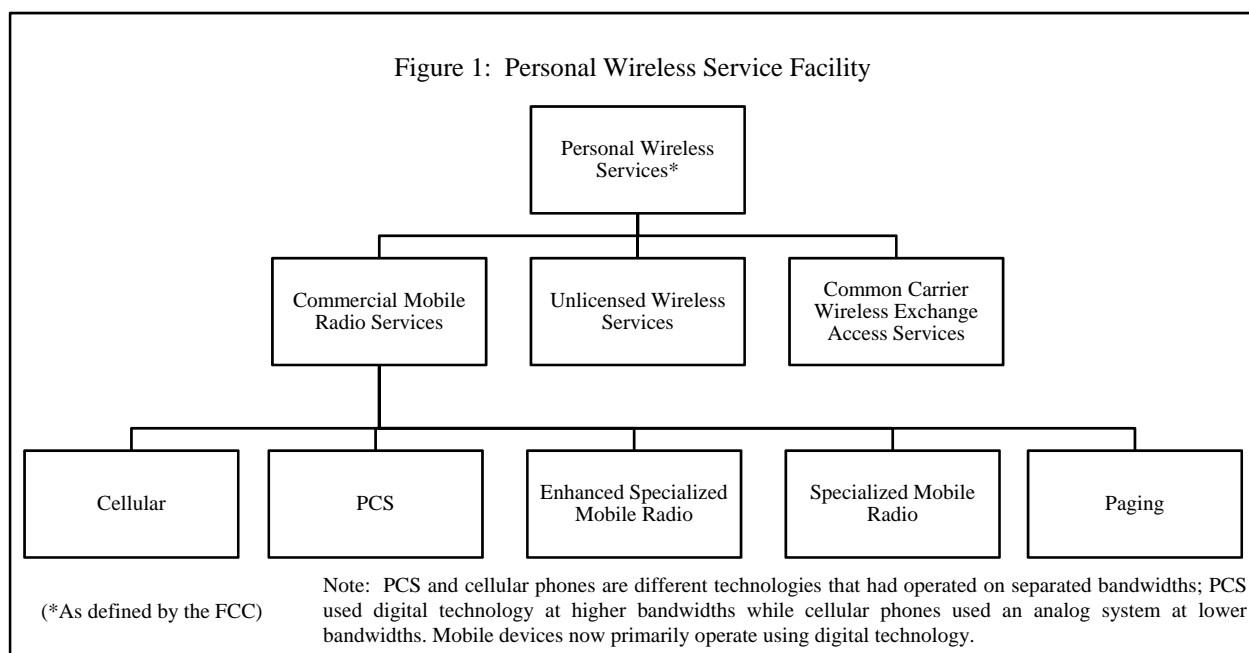
The Telecommunications Act of 1996 (the 1996 Act), administered by the FCC, is the main legislation for telecommunications regulations. The 1996 Act amended the Communications Act of 1934, which created the FCC and intended to provide for the regulation of interstate and foreign communication by wire, radio, and for other purposes. As noted by the FCC, the goal of the 1996 Act, was to let anyone enter into the communications business and to let any communications business compete in any market against any other.¹ Within the 1996 Act, local governments were granted authority to regulate telecommunications through zoning practices. This authority is codified in 47 USC § 332 Mobile Services (c) Regulatory Treatment of Mobile Services (7) Preservation of Local Zoning Authority.²

47 USC 332 (c) (7) provides local governments the authority to decide the placement, construction, and modification of personal wireless service facilities. Within this legislation the FCC defines “personal wireless service” as: commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services.² It also defines “personal wireless service facilities” as: facilities for the provision of personal wireless services² (see Figure 1³). In other words, and for the intents and purposes of this document, the legislation allows local governments to regulate the placement, construction, and modification of *telecommunications*—as described in the introduction of this document.

¹ Federal Communications Commission. <http://transition.fcc.gov/telecom.html>.

² Telecommunications Act of 1996. <http://transition.fcc.gov/Reports/1934new.pdf> - page 182 of 333.

³ Kreines and Kreines. Planwireless. <http://planwireless.com/tehnno.htm>.



More specifically, 47 USC 332 (c) (7), limits state and local government regulatory authority by specifying:⁴

1. Local zoning requirements shall not unreasonably discriminate among providers that compete against one another.
2. Local zoning requirements shall not prohibit or have the effect of prohibiting telecommunications service.
3. Local governments shall act on any request to place, construct, or modify telecommunications within a reasonable period of time. (In 2009, the FCC issued the, commonly known, “shot clock” ruling to provide further guidance on the meaning of “reasonable period of time.” The ruling states that local governments must act within 90 days of a collocation application and within 150 days for all other applications.⁵)
4. Any decision by a local government to deny a request to place, construct, or modify telecommunications shall be in writing and supported by substantial evidence contained in the written record.
5. Local governments shall not regulate the placement, construction, or modification of telecommunications based upon the environmental effects of radio frequency emissions to the extent that such facilities comply with the FCC’s regulations concerning such emissions. (Radio frequency emissions from these facilities are presumed safe as long as they meet the technical standards set by the FCC.⁶)

In other words, local governments cannot: outright ban telecommunications, favor one provider (i.e. AT&T, Ntelos, Verizon, and others) over another, purposefully delay regulatory review, or

⁴ Telecommunications Act of 1996. <http://transition.fcc.gov/Reports/1934new.pdf> - page 181 of 333.

⁵ Federal Communications Commission. http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-09-99A1.pdf.

⁶ Byers, Jackie et al., 1997. *Siting Cellular Towers: What You Need to Know What You Need to Do*. National League of Cities: Washington, D.C. – page 6 of 25.

deny requests due to radio frequency emissions being harmful to the environment or the health of residents. Local governments must also document the reasons for denying requests.

The 1996 Act also specifies that any person adversely affected by any final action or failure to act by the local government may take such matter to court. In addition, any person adversely affected by the local government that may be inconsistent with the limitations specified regarding action based upon radio frequency emissions may petition the FCC for relief.⁷

In summary, local governments are able to implement controls and regulations within the parameters of local zoning authority, which among other things could include: the zoning districts in which telecommunications are permitted or not permitted; height limitations; setbacks; the appearance of telecommunications structures including design, color, screening, and camouflaging mechanisms; and other site design controls. (Note the City currently implements some of these control mechanisms—see Appendix A.)

Section 6409 Wireless Facilities Deployment

Beyond the authority granted to States and local governments by the 1996 Act, new rules regarding telecommunications controls are now in place with the recently approved Middle Class Tax Relief and Job Creation Act of 2012 signed by President Barack Obama in February 2012. Within this legislation, specifically Section 6409 Wireless Facilities Deployment (Section 6409), there is regulatory relief for telecommunications providers that specifies when local governments must lessen or alleviate controls when making particular modifications to existing sites. Among other rules within Section 6409, subsection (a) is the most relevant for state and local governments. Section 6409 (a) is as follows:⁸

(a) Facility Modifications

- 1) In general.—Notwithstanding Section 704 of the Telecommunications Act of 1996 (Public Law 104—104) or any other provision of law, a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.
- 2) Eligible Facilities Request.—For purposes of this subsection, the term “eligible facilities request” means any request for modification of an existing wireless tower or base station that involves—
 - A. collocation of new transmission equipment;
 - B. removal of transmission equipment; or
 - C. replacement of transmission equipment.
- 3) Applicability of Environmental Laws.—Nothing in paragraph (1) shall be construed to relieve the Commission from the Requirements of the National Historic Preservation Act or the National Environmental Policy Act of 1969.

With such new legislation on the books, States and local governments are still applying these new rules to the best of their ability as there has been little time for sound interpretations of the law to be established. Staff has researched this matter, discussed the legislation with the former

⁷ Telecommunications Act of 1996. <http://transition.fcc.gov/Reports/1934new.pdf> - page 182 of 333.

⁸ Middle Class Tax Relief and Job Creation Act of 2012. Public Law 2012—96—Feb. 22, 2012. <http://www.gpo.gov/fdsys/pkg/PLAW-112publ96/pdf/PLAW-112publ96.pdf> - page 78 of 102.

City Attorney, and has purchased additional educational resources specifically on this topic to understand and implement the new rules as was hopefully intended.

There are several terms and phrases used in Section 6409 that must be understood before one can properly implement the new rules, including: base station, collocation, facility, tower, and substantially change. Section 6409 does not define the use of these terms; therefore, one must refer to several federal documents including the Code of Federal Regulations—47 CFR § 24.5 Terms and Definitions, the FCC’s 2004 Nationwide Programmatic Agreement, and the FCC’s 2002 Antenna Collocation Programmatic Agreement.

47 CFR 24.5 defines “base station” as:⁹

Base Station: A land station in the land mobile service. (Note: On January 25, 2013, the FCC released a Public Notice that offered guidance for interpretation of Section 6409, where they further described “base station” as consisting of radio transceivers, antennas, coaxial cable, a regular and back-up power supply, and other associated electronics. Also, in the context of Section 6409, the FCC believes it is reasonable to interpret that “base station” shall also include a structure that currently supports or houses an antenna, transceiver, or other associated equipment that constitutes part of a base station. Furthermore, the FCC believes that “base station” encompasses any technological configuration, including distributed antenna systems and small cells.¹⁰)

Then, the 2004 Nationwide Programmatic Agreement defines the following:¹¹

Collocation: The mounting or installation of an antenna on an existing tower, building, or structure for the purpose of transmitting radio frequency signals for telecommunications or broadcast purposes.

Facility: A tower or an antenna. The term facility may also refer to a tower and its associated antennas.

Tower: Any structure built for the sole or primary purpose of supporting Commission-licensed or authorized antennas, including the on-site fencing, equipment, switches, wiring, cabling, power sources, shelters, or cabinets associated with that tower but not installed as part of an antenna as defined herein.

Lastly, the 2002 Antenna Collocation Programmatic Agreement clarifies what is meant by “substantially change.” It should be understood, the wording “substantially change” or “substantial change” is not used. Instead, it explains that a *Substantial increase in the size of the tower* occurs when:¹²

- (1) The height of the tower will be increased by more than the greater of: (a) 10% of the height of the tower; or (b) the height extension needed to accommodate one additional antenna array with a separation of 20 feet from the nearest existing antenna. Thus, a 150-foot tower may be increased in height by up to 15 feet without constituting a substantial increase in size. If there is already an antenna at the top of the tower, the tower height may be increased by up to 20 feet plus the height of a new antenna to be located at the new top of the tower.

9 Federal Communications Commission. 47 CFR § 24.5 Terms and Definitions. <http://www.gpo.gov/fdsys/pkg/CFR-1999-title47-vol2/pdf/CFR-1999-title47-vol2-sec24-5.pdf> - page 1 of 2.

10 Federal Communications Commission. January 25, 2013. DA-2047. http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-12-2047A1.pdf. - page 3 of 5.

11 Federal Communications Commission. September 2004. FCC 04-222. Nationwide Programmatic Agreement: Appendix B. http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-04-222A3.pdf - page 6 of 29.

12 Federal Communications Commission. January 10, 2002. Antenna Collocation Programmatic Agreement. http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-02-28A1.pdf - page 4 of 12.

- (2) More than four new equipment cabinets or more than one new equipment shelter will be added.
- (3) The width of the tower will be increased by more than the greater of: (a) 20 feet in any direction from the edge of the tower; or (b) the width of the tower structure at the level of the appurtenance. For example, if the width of the tower structure at the level of the appurtenance is 40 feet, the appurtenance can protrude up to 40 feet from the edge of the tower at that point without constituting a substantial increase in the size of the tower.
- (4) Excavation will occur outside the current tower site, defined as the area within the boundaries of the leased or owned property surrounding the tower at the time of the proposed collocation, and including any access or utility easements related to the site.

In brief, to take advantage of Section 6409, a telecommunications provider can only make a modification (as listed) on an existing wireless tower or base station (as defined) and such modification cannot substantially change the characteristics of the eligible facility. Furthermore, to make a modification to an eligible facility, the local government shall make the decision as to whether an eligible facility would be substantially changed.

To date, only one provider in the City has requested, and has received approval, to make modifications to an eligible facility under the provisions of Section 6409.

IV. Regulations in Practice and Other Suggested Legislation

Typical Telecommunications Provisions

According to *Siting Cellular Towers: What You Need to Know, What You Need to Do*¹³, a guide book published by the National League of Cities and supported by the American Planning Association, the International City/County Management Association, the National Association of Counties, the National Association of Telecommunications Officers and Advisors, the National League of Cities, and Public Technology, Inc., there are key elements local governments should consider when establishing a telecommunications ordinance. These elements include: specifying application requirements; provisions that maximize the use of collocation (also known as site sharing); addressing if and how public property may be used; safety (which cannot be associated with radio frequency emissions); aesthetics; lighting and structural integrity; maintenance and parking; and abandonment.

Within the guidelines of the 1996 Act, there are almost limitless ways to regulate telecommunications through zoning enforcement. Staff has reviewed many ordinances and has read a multitude of variations currently in practice. Along with the typical regulations one would expect in a telecommunications ordinance (i.e. height limitations, setback minimums, etc.) there are many other things to consider for zoning regulations.

The list below includes a handful of localities selected by staff to demonstrate examples of provisions across a variety of issues. The information does not list or describe every provision from each of the listed localities or model ordinances, nor are there examples from every locality that staff reviewed. Generally, each locality and model ordinance had repeating themes of typical provisions such as height limitations, setback minimums, and different characteristics of regulations depending upon the type of zoning districts in which they are permitted. There is not

¹³ Byers, Jackie et al., 1997. *Siting Cellular Towers: What You Need to Know What You Need to Do*. National League of Cities: Washington, D.C. – pages 10-13 of 25.

a one-size-fits-all model as some localities take a more restrictive approach requiring public hearings prior to installing any type of facility while others provide some approval by administrative review.

- *Rockingham County, Virginia:*¹⁴ Exempts amateur radios, television reception antennas, and satellite earth station antennas; requires providers to submit an inventory of their equipment by February 1st of each year; prohibits advertising on the facility; encourages providers to conduct a public information meeting if towers are proposed to be taller than 100 feet in height; landscaping is required that effectively screens the view of the support buildings and fence from adjacent property; components of a telecommunications facility that is not operated for a continuous period of six months shall be considered abandoned and must be removed within 90 days; a form a surety in the amount of \$10,000.00 or 25 percent of the material costs of the structure (whichever is greater) is required to secure the cost to remove the tower and return the site to its original condition to the extent reasonably possible.
- *Westmoreland County, Virginia:*¹⁵ Limits the sizes of antennas and dishes, which may be larger than otherwise permitted by special exception; limits the height and amount of space the unmanned equipment structures (i.e. equipment sheds and cabinets) can contain on the site; requires photo-imagery or other visual simulation upon application; prohibits the removal of trees within 200 feet of telecommunications towers; requires that all monopoles shall be designed to accommodate at least three providers.
- *City of Charlottesville, Virginia:*¹⁶ Requires all communications facilities to comply with the minimum setback requirements of the zoning district in which they are located; when attaching facilities to an existing structure, the structure shall be at least 40 feet in height and the total height of the communications facility shall not increase the height of the attachment structure by more than 20 feet; structures supporting one communications facility shall be no taller than 70 feet, structures supporting two communications facilities shall be no taller than 100 feet, and structures supporting three or more communications facilities shall be no taller than 150 feet; special use permits are available for facilities above the regulated heights.
- *City of Staunton, Virginia:*¹⁷ Allows the placement of telecommunications on alternative structures such as roofs, walls, water tanks, existing towers, and other structures approved by the zoning administrator so long as the height of the structure is not increased by 20 feet; telecommunications on alternative structures must be identical in color or closely compatible with the structure; requires telecommunications facilities to meet all setback requirements for primary structures for the zoning district in which they are located; requires telecommunication facilities not on alternative structures to be setback 110 percent the height of the tower from structures intended for human habitation.

14 Rockingham County, Virginia Code of Ordinances Chapter 17 Article VII Division 6A Wireless Telecommunication Facilities:

http://library.municode.com/HTML/12196/level4/SUHITA_CH17ZO_ARTVIIUSRE_DIV6AWITEFA.html#TOPTITLE.

15 Westmoreland County, Virginia Code of Ordinances Zoning Ordinance Article 4 Supplemental Use Regulations 4-7 Telecommunications Facilities: <http://www.westmoreland-county.org/assets/docs/ART%204%20Supp%20Regs.pdf>.

16 City of Charlottesville, Virginia Code of Ordinances Chapter 34 Article IX Division 5 Telecommunications Facilities:

http://library.municode.com/HTML/12078/level4/CO_CH34ZO_ARTIXGEAPRE_DIV5TEFA.html#TOPTITLE.

17 City of Staunton, Virginia Code of Ordinances Chapter 18.185 Telecommunications Facilities:

<http://www.codepublishing.com/VA/staunton.html>.

- *City of Lexington, Virginia:*¹⁸ Requires applicants to provide an inventory of its existing facilities that are either within the City or within five miles of the City limits of which shall specify the location, height, and design of each tower; regulates aesthetics including evaluating not only the compatibility with their surroundings but also by the extent of visual clutter they create; prohibits artificial lighting unless required by the FCC; in evaluating conditional use permits they consider the proximity of towers to residential structures and residential district boundaries.
- *Louisa County, Virginia:*¹⁹ Exempts antenna support structures, antennas, and/or antenna arrays for AM/FM/TV/HDTV broadcasting transmission facilities licensed by the FCC; exempts wireless communications facilities when it is an accessory use to a business operated on the same property, provided that zoning review determines certain criteria is met, some of which includes that the height of the antenna support structure shall not exceed 100 feet in height, no more than one antenna support structure shall be permitted per property, no support structure is located within 200 feet of a public road, no support structure shall be visible from another support structure, as determined from grade level at the base of the support structure; generally requires that equipment cabinets shall not be visible from pedestrian views; All freestanding telecommunications facilities up to 120 feet in height shall accommodate no less than four antenna arrays, facilities between 121 feet and 150 feet shall accommodate no less than five antenna arrays, and facilities that are 151 feet and taller shall accommodate no less than six antenna arrays; attached non-concealed facilities shall only be allowed on electrical transmission towers and existing light stanchions subject to approval by the community development department and utility company.
- *Alleghany County, North Carolina:*²⁰ Requires all towers less than 40 feet in height to be registered with the government and requires a special use permit for any tower above 40 feet in height; at the discretion of the County Planner, experts may be contracted to assist with the review at an expense of the applicant not to exceed \$5,000.00.; additional users' equipment, which does not add to the tower height, may be added without approval or review (aside from required building permits) and no application or fee is required; collocation is permitted on power poles; stealth or camouflage technology must be used when the proposed tower is within particular viewsheds—one of which is the Blue Ridge Parkway.
- *City of Minnetonka, Minnesota:*²¹ Grants staff authority to approve equipment administratively when telecommunications facilities are located on electric transmission towers carrying over 200 kilo volts of electricity, located on support structures that have already received a conditional use permit, and gives staff the authority to grant a one-time 15-foot height extension to towers; grants staff authority to approve facilities located in public right-of-way that meet certain criteria; facilities not eligible for administrative

18 City of Lexington, Virginia Code of Ordinances Part 2 Chapter 420 Article II 420-28 Telecommunications Towers:
<http://ecode360.com/9735964#9736025>.

19 Louisa County, Virginia Code of Ordinances Chapter 86 Article IX Telecommunications Regulations:
http://library.municode.com/HTML/12480/level3/CO_CH86ZO_ARTIXTERE.html#TOPTITLE

20 Alleghany County, North Carolina Code of Ordinances 1-166 2001 Wireless Tower Communication Ordinance: <http://alleghanycounty-nc.gov/ordinances/1-166.pdf>.

21 City of Minnetonka, Minnesota Code of Ordinances Chapter 3 Zoning Regulations Section 300.34 Telecommunications Facilities:
[http://www.amlegal.com/nxt/gateway.dll/Minnesota/minnetonka/chapter3zoningregulations?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:minnetonka_mn\\$anc=JD_300.34](http://www.amlegal.com/nxt/gateway.dll/Minnesota/minnetonka/chapter3zoningregulations?f=templates$fn=default.htm$3.0$vid=amlegal:minnetonka_mn$anc=JD_300.34).

approval must obtain a conditional use permit, where among other guidelines must use stealth design techniques as reasonably possible—financial considerations alone are not justification for failing to provide stealth design; facilities located on an existing building shall not extend more than 15 feet above the height of the building.

- *Cuyahoga County, Ohio (model ordinance)*:²² Suggests requiring applicants wishing to install a new tower within a quarter mile of another tower to provide written evidence of the contact made with the owners of the other tower that they have inquired about the potential collocation opportunities that are technically feasible locations; encourages underground equipment shelters.
- *Scenic Virginia, Inc. (model ordinance)*:²³ Suggests requiring a balloon test be conducted to illustrate the height of the proposed tower and to notify the local government for when the test would be conducted; to require photographs of the balloon test be taken and submitted upon application; to allow facilities, other than a microwave dish, that are attached to an existing structure and which does not exceed the height of the existing structure and is flush mounted to the structure to be permitted by-right; allow only flush mounted antennas on existing buildings that are painted the same color as the existing building and prohibit such antennas from projecting more than 12 inches from the existing building; require applicants to submit a report each year identifying each user of the existing structure.
- *PCIA (Personal Communications Industry Association) – The Wireless Infrastructure Association (model ordinance)*:²⁴ Suggests using the term “concealed” rather than “stealth” for facilities that are integrated as an architectural feature of a structure so that the purpose of the facility provides the services necessary while the structure is not readily apparent to a casual observer; concealed antennas must be enclosed, camouflaged, screened, or obscured—examples include but are not limited to flagpoles, bell towers, clock towers, crosses, monuments, smoke stacks, parapets, and steeples; allow towers and support structures by administrative review in any zoning district, except residential districts, at heights that are less than 60 feet; allow concealed facilities by administrative review that are less than 60 feet in height in residential districts; allow concealed telecommunications facilities in any district, except residential districts, up to 150 feet in height; allow towers and support structures by administrative review in industrial districts up to 199 feet in height; allow monopoles and replacement facilities on public property and right-of-ways and on structures such as municipal communication facilities, athletic field lights, traffic lights, street lights, and other utility poles; monopoles and towers shall be setback from all property lines a distance equal to their height.

If revised regulations are desired by the City, one of the more noteworthy examples demonstrated in the list above, and supported by PCIA (the Wireless Infrastructure Association), is the encouragement or requirement of stealth/concealed technology. This type of technology is integrated as an architectural feature of an existing structure or any new support structure designed so that the purpose of the facility or support structure for providing telecommunications services is not readily apparent to a casual observer. Examples of this technology include

²² <http://planning.co.cuyahoga.oh.us/documents/pdf/celltower.pdf>.

²³ <http://www.scenicva.org/docs/ordinances/Scenic%20Virginia%20Model%20Cell%20Tower%20Ordinance.pdf>.

²⁴ http://www.pcia.com/images/Advocacy_Docs/PCIA_Model_Zoning_Ordinance_June_2012.pdf.

flagpoles, bell towers, clock towers, crosses, monuments, smoke stacks, parapets, steeples, faux trees, and structures intended as art. According to the consulting firm Kreines and Kreines, Inc., Consultants to Cities & Counties on Wireless Planning, and the publisher of the *PlanWireless* newsletter, the term “concealed” should be used in place of “stealth” as the latter is often used synonymously with “sneaky,” where the intent is to fool or deceive, and therefore a negative application to use in an ordinance.²⁵

Concealed telecommunications technology is in use across the country and locally in Rockingham County in the Massanutten Resort area. The Physical Plant Director for Massanutten Resort explained the resort has four concealed facilities in the form of flagpoles ranging from 90 to 110 feet in height, one of which is located at the entrance to the Massanutten Water Park. The Massanutten Property Owners Association also has a concealed telecommunications facility in the form of a flagpole at 100 feet in height (Figure 2). Furthermore, the associated equipment facility for the concealed flagpole tower, as shown in Figure 2, is located entirely underground within a vault (Figures 3 & 4); a practice that is encouraged within the Cuyohoga County, Ohio telecommunications model ordinance.



Figure 2: A concealed telecommunications facility as a flagpole at Massanutten Village.²⁶

²⁵ Kreines and Kreines. Planwireless. http://planwireless.com/700_mhz_%26_aws.htm.

²⁶ Provided by the Administrator of the Massanutten Property Owner’s Association (11-16-12).



Figure 3: Front view of the base of the concealed telecommunications flagpole. The underground equipment vault is located in the background of the picture, behind the base of the flagpoles.²⁶



Figure 4: Rear view of the base of the concealed telecommunications flagpole. The underground equipment vault is located under this area with only the visible small piece of equipment at the surface.²⁶

Figures 5 and 6 demonstrate other concealed technology examples that are in use in Virginia while Figure 7 exhibits a facility located in Liberty, Missouri that serves as a telecommunications tower and a piece of art that honor's the City's commitment to education.



Figure 5: Concealed telecommunications in the form of a tree near Mt. Vernon, VA.²⁷



Figure 6: The Unitarian Universalist Church of Roanoke's spire includes telecommunications inside the structure completely concealed from view.²⁸ The provider, Ntelos, paid to remove the old spire, to install the new spire, and for all of the other necessary equipment.²⁹

²⁷ Bedford County, Virginia's Strategic Plan for Commercial Wireless Telecommunications Facilities. Prepared by the Atlantic Group of Companies. August 26, 2002. Page 44 of 88. <http://www.co.bedford.va.us/res/Planning/pdf/telecommunications.pdf>.

²⁸ Unitarian Universalist Church of Roanoke, Virginia. <http://uuroanoke.org/photo.f.htm>

²⁹ Podger, Pamela J. November 11, 2006. *The Roanoke Times*. Church Receives Steeple Upgrade. <http://www.roanoke.com/news/roanoke/wb/90988>.



Figure 7: A 100-foot telecommunications tower disguised as a No. 2 pencil located in Liberty, Missouri.³⁰ City officials hoped the design of the tower would draw attention to the community's commitment to education at institutions such as William Jewel College and the Liberty School District.³¹

Another noteworthy regulation, as suggested in the examples above, is the requirement in particular situations to have flush mounted antennas that are painted the exact same color as the supporting structure. Although such a regulation is not part of the City's existing regulations, this practice has already been conditioned on a telecommunications SUP in the City. Figure 8 illustrates the flush mounted antennas that have been painted the same color as the Holiday Inn building at 1400 East Market Street in the City—a condition of that property's SUP granted in 2006.

³⁰ News-Press and Gazette Company, NPG Newspapers Inc. <http://prewww.kccommunitynews.com/image/28033721/detail.html>.

³¹ Federal Communications Commission. In the Matter of Acceleration of Broadband Deployment Expanding the Reach and Reducing the Cost of Broadband deployment by Improving Policies Regarding Rights of Way and Wireless Facilities Siting. Reply Comments of the City of Liberty, Missouri. WC Docket No. 11-59. <http://apps.fcc.gov/ecfs/document/view.action?id=7021711459>.



Figure 8: Flush mounted antennas painted the same color as the supporting structure at 1400 East Market Street, Harrisonburg, Virginia.

Legislation for Recent and Future Practices in Telecommunications

The regulations discussed so far are the typical provisions that localities have been implementing since the 1996 Act was approved. Generally speaking, many of these ordinances were formulated to regulate the 1G, 2G, and 3G cell sites, all of which are referred to as “macrocells.”³² These macrocells are the most familiar component of the telecommunications network including but not limited to towers and the antenna installations that are installed on tall buildings, water tanks, and other tall structures (Figures 2 through 8 above are all macrocell sites.) Macrocells form the core of the macrocellular network that allows providers to deliver voice, text, and broadband to wireless subscribers.³³ These facilities are free standing, needing only a landline connection to the Public Switched Telephone Network (PSTN)—the name given to the traditional landline telephone network.³⁴ They are effective in covering large areas with relatively high capacity, capable of hosting multiple providers, all while transferring radiofrequency signals at high power levels. As technology has changed over the years, macrocells have been upgraded, but the coverage areas have typically not been expanded.³³

The macrocells have functioned well in receiving and sending voice calls, however, these systems have been strained with the continuous demand for sending and receiving data from and to so many wireless devices. Because of this, “small cells,” or “microcells,” are the future of the wireless industry (Figure 9)³².

32 Kreines & Kreines, Inc. *Planwireless: A Newsletter About Planning for Personal Wireless Service Facilities*. December & January 2013. Vol. 17. No. 1.

33 The DAS Forum. February 4, 2013. *Distributed Antenna Systems (DAS) and Small Cell Technologies Distinguished*. http://www.thedasforum.org/wp-content/uploads/2013/02/DAS-And-Small-Cell-Technologies-Distinguished-2_4_13.pdf.

34 Dictionary.com. February 22, 2013. Public Switched Telephone Network. <http://dictionary.reference.com/browse/public+switched+telephone+network>.

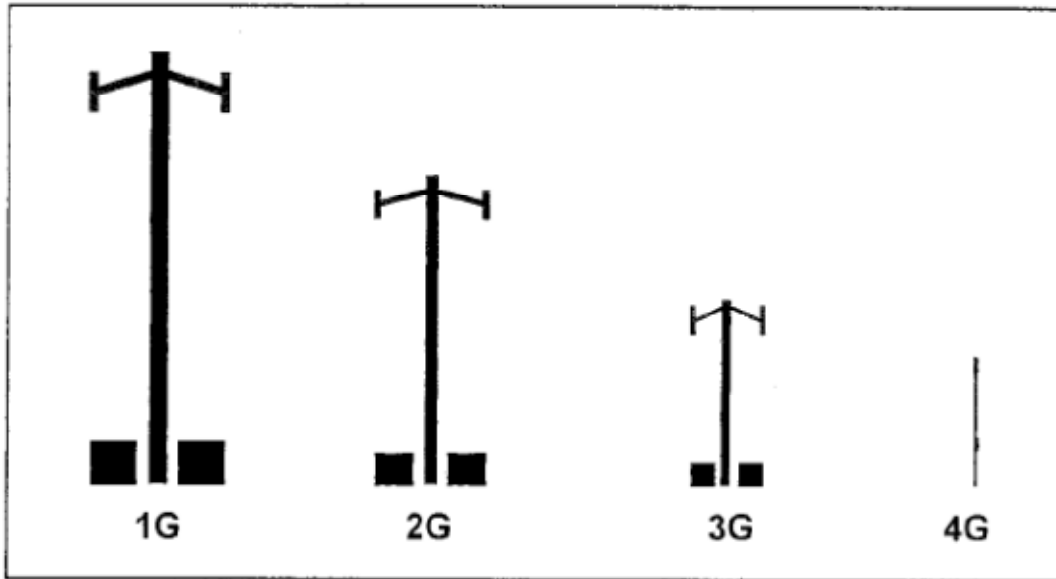


Figure 9: As illustrated in *Planwireless*, the evolution of cell sites will change with 4G. While 1G, 2G, and 3G relied on independent macrocells, 4G will depend on small cell sites.³²

The solution to serving so many users transferring so much data is having many microcells to work in unison with the macrocells. In years past, providers requested to erect new macrocell telecommunications facilities because of issues with low coverage; however, that is no longer the case as in most populated areas there is wall-to-wall cell site coverage (Figure 10).³²

As noted above, the wall-to-wall macrocell coverage works well for voice transfer, but data transfer, especially video data and the use of “apps,” overwhelm the system and therefore necessitate the installation of microcells. The system works by a macrocell handing off the data to a nearby microcell, which finds its own way through the network, whether it is handed off to another cell site or to what is known as a “hub,” to eventually off-load the data to its final destination.³² For providers to continue properly serving their clients, many microcells can be established within the coverage of macrocells (Figure 11).³² Although the use of microcells is predicted to increase and be the “future of the wireless industry,” this is not a new practice. As noted in an issue of *Planwireless*, a provider in the suburbs of Chicago placed microcells underneath the coverage areas of towers back in 1997 for matters of capacity.³⁵

³⁵ Kreines & Kreines, Inc. *Planwireless: A Newsletter About Planning for Personal Wireless Service Facilities*. February & March 2012. Vol. 16. No. 2.

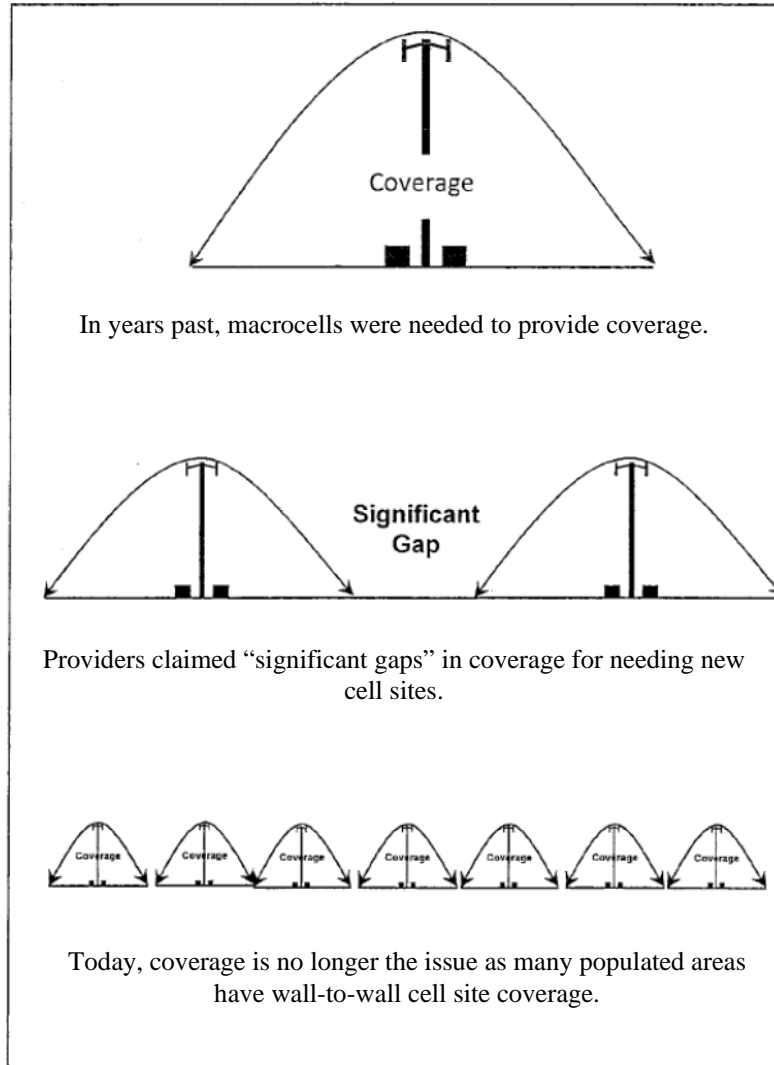


Figure 10: As illustrated in *Planwireless*, the progression of cell site installation due to coverage issues.³²

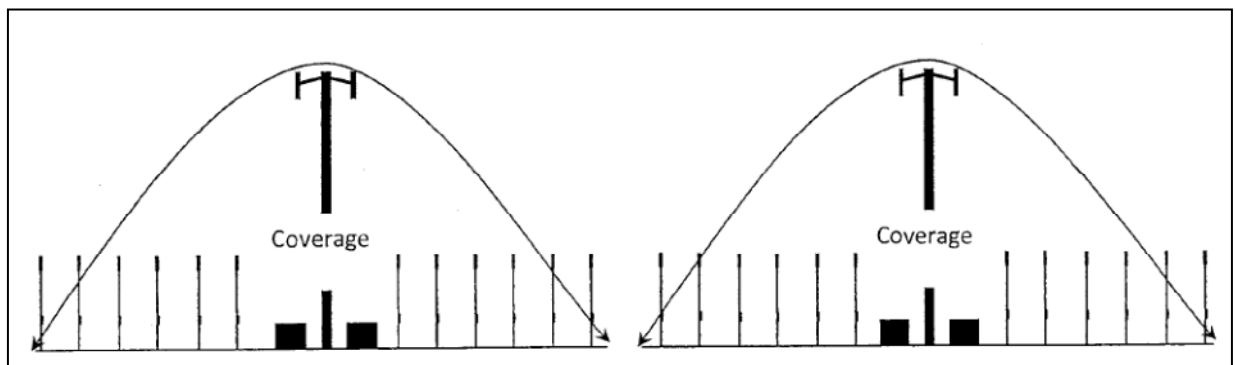


Figure 11: Small cells built within macrocell coverage to support data transfer.³²

The scenario as generally depicted in Figure 11 is, for the most part, already occurring in the City. The telecommunications tower at 1106 Reservoir Street, the same facility that triggered this telecommunications regulations research project, although may not be classified as a small cell

or microcell, fits the description of the intent of a microcell site. As noted in the staff report for the 1106 Reservoir Street SUP request to allow the telecommunications facility, the tower was needed “to offer a solution for off-loading capacity from the surrounding AT&T antenna locations.”³⁶ In addition, the minutes from the Harrisonburg Planning Commission meeting held on November 9, 2011, reflects the contractor, who represented the applicant for the SUP, stating the site was needed for both “in-building coverage” and was “a solution for off-loading the capacity from the other sites,”³⁷ both of which are arguments supporting microcell solutions. Adding to this argument, the site is adjacent to a tributary of Blacks Run, which is not in a typically desired higher elevation point within the City.

If this is an example of things to come, then the City may soon have an influx of telecommunication facility requests in areas that were never previously imagined to be desirable. Microcells are solutions to capacity and in-building coverage, but as noted macrocells, like the one recently erected at 1106 Reservoir Street, can also be used as a solution for capacity and in-building coverage. What further makes erecting macrocells so attractive to providers is that they can serve their clients’ demands while also making significant amounts of money by having a platform for other carriers to rent space for their equipment. Knowing there is generally no longer significant gaps in coverage, providers will most likely continue demanding to establish macrocell sites, even though microcells could satisfy the service issues, mainly due to the significant economic benefit to their company.

The good news about microcell technology is that it does not only come in the form of smaller towers. This technology can simply be an antenna and a box hanging on a pole or building, which is commonly referred to as a “microcell,” a “booster,” or a “repeater.” Another more complex and involved system, which is sometimes included in the microcell technology category is known as DAS (Distributed Antenna System).³² (The following information regarding boosters and DAS is not meant to provide a strict, technical understanding of the technology but rather a basic description of what the technology needs to operate and generally how they work.)

Booster and repeater devices are stand alone, short range radio transceivers that are located in specific locations, either indoors or outdoors, where there is often low signal quality and high demand for a telecommunications signal. Typically boosters are hard wired while repeaters are commonly wireless (the wireless technology also includes mobile, in-vehicle capabilities). Some devices are specifically called “microcells” and have defined coverage ranges and can usually support up to 200 users. Pico/metrocells is another example of this technology and have smaller coverage areas of up to 30,000 square feet and can handle about 80 users. Both microcells and pico/metrocells require professional installation. (The James Madison University Festival Conference Center has a professionally installed microcell repeater.) An even smaller device that does not require professional installation and which does not require an existing telecommunications signal, is called a femtocell. These units are located in homes or offices and are connected through a high speed broadband internet connection and usually require specific phone numbers to be registered to the unit. Depending upon the femtocell unit, four to 20 phones can be covered and the registered phones are the only devices that can receive the additional coverage³³ (Figure 12).

36 Planning Commission Staff Report. November 9, 2011. “Communications Tower 1106 Reservoir Street.” Special Use Permit.

37 Harrisonburg Planning Commission Minutes November 9, 2011. Special Use Permit 1106 Reservoir Street. Page 7.

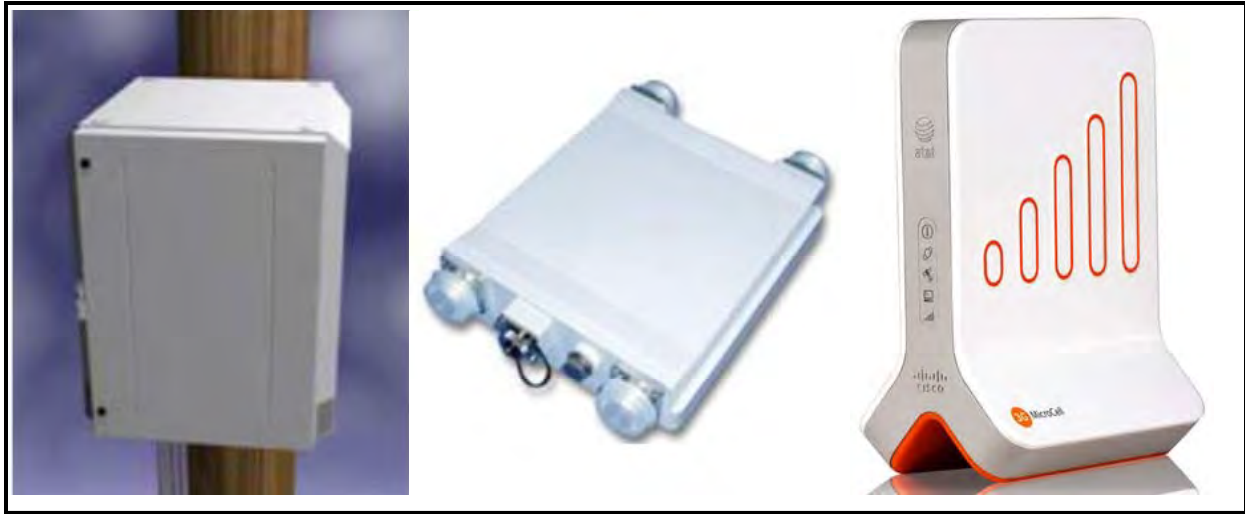


Figure 12: Example of a microcell³³ (left), picocell³³ (center), and femtocell³⁸ (right).

By some estimates, there are more than 2 million signal boosters in use today. They are used to fill coverage gaps in urban environments, such as buildings, tunnels, and bridges, which benefits individuals working in office buildings, health care facilities, and on educational campuses.³⁹ They are also used in rural, underserved, and difficult to reach areas. When used properly, they can provide public safety benefits where coverage is deficient or where a signal is blocked or shielded by enabling the public to connect to 911 in an emergency.³⁹

From their initial use to the present time, boosters and repeaters have not been heavily regulated by the FCC. The industry has learned, however, that malfunctioning, improperly installed, or technically-deficient boosters may cause harmful interference to commercial and public safety wireless networks. In knowing this, on February 20, 2013, the FCC released a *Report and Order* to incorporate safeguards, generally known as the Network Protection Standard, to mitigate interference to wireless networks.³⁹ In this report, the FCC categorized the booster technology into two categories: Consumer Signal Boosters and Industrial Signal Boosters.

Consumer signal boosters are designed to be used “out of the box” and are specifically defined by the FCC as: “a bi-directional signal booster that is marketed and sold to the general public for use without modification.” These types of devices do not require professional installation and are used for personal use by individuals to improve coverage in a home, car, boat, recreational vehicle and related areas. Subscribers must obtain a form of licensee consent to operate the booster, register the unit with the provider, and the booster must be certified by the FCC. A femtocell, as described and pictured above in Figure 12, is an example of a consumer signal booster. The new rules require consumer signal boosters to have specific technical features to protect against interference.³⁹

Industrial signal boosters include a variety of devices that are designed and installed by licensed or qualified professionals and are typically used to serve multiple users and cover large areas such as stadiums, airports, office buildings, hospitals, tunnels, and educational campuses. They are specifically defined by the FCC as: “all signal boosters other than consumer signal boosters.” These devices require an FCC license or express license consent to operate. Because

³⁸ Image found at: http://blogs-images.forbes.com/anthonykosner/files/2012/10/3g-microcell_large_verge_medium_landscape.jpeg.

³⁹ Federal Communications Commission. 2013. Report and Order. In the Matter of Amendment of Parts 1, 2, 22, 24, 27, 90 and 95 of the Commission’s Rules to Improve Wireless Coverage Through the Use of Signal Boosters. http://transition.fcc.gov/Daily_Releases/Daily_Business/2013/db0320/FCC-13-21A1.pdf.

these devices are installed with explicit licensee consent and close licensee coordination, they do not require particular interference protection. These devices may also require additional antennas, amplifiers, and other components to operate appropriately.³⁹

In the February 20, 2013 *Report and Order*, the FCC stated they will no longer accept applications to certify any boosters that do not comply with the new rules, and furthermore, on or after March 1, 2014, all consumer and industrial signal boosters sold and marketed in the United States must meet the new requirements.³⁹

Although sometimes referred to as microcell technology, DAS should not be confused with boosters and similar independent microcell devices. The DAS Forum, a broad-based organization dedicated to the DAS component of the nation's wireless network, and made up of leaders focused exclusively on shaping the future of DAS as a viable complement to traditional macrocell sites in challenging environments,⁴⁰ states that DAS is being deployed to provide coverage in targeted locations, moving radios closer to the subscriber, and or to providing additional call and data-handling capacity in areas with concentrated demands for wireless service.³³ (Note: As of April 22, 2013, the DAS Forum was renamed the HetNet Forum.⁴¹ The HetNet Forum is a membership body within PCIA. "HetNet" is short for heterogeneous network⁴⁰ and is further described below.)

DAS networks include three primary components: 1) a number of remote communications nodes, each having at least one antenna for transmission and reception, 2) a high capacity signal transport medium, which is typically a fiber optic cable (either underground or aerial⁴²), connecting the nodes to the central communications hub, and 3) equipment located at the hub site to propagate and/or convert, process or control the signals transmitted and received through the nodes (the hub is where the equipment is stored similar to the equipment found at the base of telecommunications towers). Furthermore, and depending upon the exact environment of the DAS, additional equipment such as amplifiers, remote radio heads, signal converters, and power supplies, may be needed³³ (Figure 13).

DAS can be deployed indoors and outdoors, and it is often desirable in urban areas and within or around college campuses. Indoor DAS networks can be deployed in spaces where large numbers of people congregate such as sports stadiums and arenas, convention centers, and healthcare facilities. Outdoor DAS networks are deployed in targeted locations within areas already covered by macrocells to increase capacity. DAS systems can range from two to hundreds of nodes, and each node transmits radiofrequency signals at much lower power levels than common macrocell sites. Often DAS nodes are attached to utility poles or similar structures (Figure 14) in the public right-of-way covering several blocks, whole neighborhoods, and even entire cities.³³ DAS hubs can be located up to 30 miles away, which could be in different jurisdictions.³⁵

40 The DAS Forum. February 21, 2013. About Us: Who We Are. <http://www.thedasforum.org/about-us/who-we-are/>.

41 The HetNet Forum. <http://www.thedasforum.org/the-das-forum-renamed-hetnet-forum/>.

42 American Tower. 2011. DAS Solutions: Delivering Coverage and Capacity in Today's Challenging Environments. <http://www.americantower.com/marketing227/AmericanTowerDASSolutionsBrochure.pdf>.

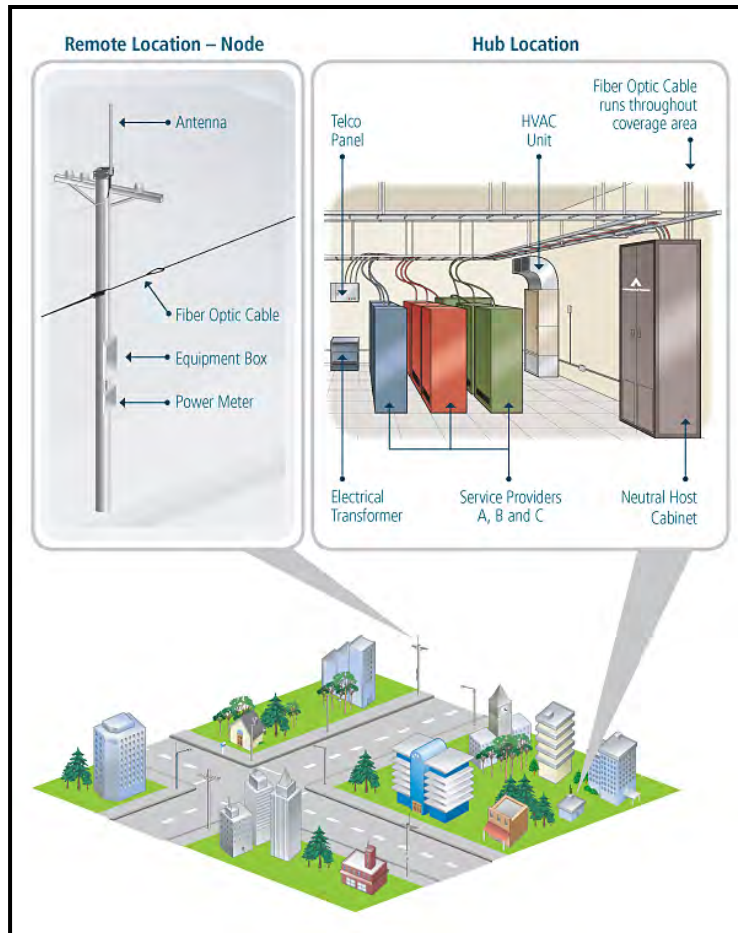


Figure 13: Basic example of an outdoor deployed DAS network.⁴³



Figure 14: A DAS node attached to a street light in North Carolina⁴⁴ (left), a node attached to a wooden power pole in New Jersey⁴⁴ (center), and a close-up view of node equipment (right)³³.

⁴³ Crown Castle. February 22, 2013. We Are Solutions Case Study: Deployment in New York City. <http://www.crowncastle.com/das/caseStudies/newYork.pdf>.

There are of course advantages and disadvantages with DAS technology. Some of the advantages include: providing low-profile infrastructure, providing coverage in challenging or hard to reach areas, utilizing less power, operating multi-system networks (i.e. PCS, broadband, WiFi, etc.), and it is easier to upgrade.⁴⁵ The disadvantages are usually associated with the expense of such systems. Regardless of who the financier is, there is usually significant upfront capital investments needed, especially when deployed outside due to design and installation issues and for the need of miles of fiber optic cabling.³³ Specifically from a provider's perspective, some of the disadvantages are that leases are usually higher than macrocell sites, the coverage area per node is small, and there may be pole attachment issues (i.e. availability or right-of-way/ownership).⁴²

Furthermore, depending upon which side of the aisle one falls, DAS deployment may be easy or difficult to implement, and it all depends upon how the locality chooses to regulate the technology. Interestingly, the model ordinance devised by PCIA includes a statement that “no provisions of [the model ordinance] shall apply to the siting of Distributed Antenna Systems (DAS) or wireless facilities located within and intended to provide wireless coverage within a structure.”²⁴ On the other hand, Kreines and Kreines, Inc. contends that microcell technology should require discretionary review and approval, just like macrocells because microcells emit radio frequency radiation—although at lesser amounts—just like macrocells. Kreines and Kreines, Inc. also states that some microcell sites will be close to the macrocells that they support and in such cases the cumulative RFR emissions environment (often called the RF floor) will be raised.³²

As the City moves forward with considering telecommunications policies and regulations, the term heterogeneous network, or the “HetNet,” as mentioned above, should be understood as it is one of the newest identifications or terminologies used when describing the wireless network. The HetNet, as described by 4G Americas—an organization devoted to promoting, facilitating, and advocating for the deployment of the 3rd Generation Partnership Project (3GPP) family of technologies throughout America⁴⁶—in their white paper *Developing and Integrating a High Performance HET-NET*,⁴⁷ consists of different wireless technologies working together to provide a seamless wireless experience. It is comprised of traditional large macrocells, microcells, picocells, femtocells, and WiFi networks to offload telecommunications traffic.⁴⁷ In addition, the HetNet Forum describes the HetNet as a wireless system, comprised of an array of mobile and wireless technologies and infrastructure that are interoperable with the macrocellular network that provides harmonious voice and data communications.⁴⁰ Figure 15 below provides a basic illustration of the HetNet.

44 HetNet Forum. <http://www.thedasforum.org/gallery/outdoor-das-images/>, and <http://www.flickr.com/photos/dasforum/6420156075/sizes/o/in/photostream/>, and <http://www.flickr.com/photos/dasforum/6420104509/sizes/o/in/photostream/>.

45 Malone, Christine A. January 24, 2011. DAS and the Town of Carefree: Technology Overview and Answer to Common Questions. Comp Comm/STM COMM, LLC. <http://www.carefree.org/vertical/sites/%7B7E577914-08B7-498C-8013-7E6515AE5610%7D/uploads/%7B05262F5F-E40B-4461-BDE4-327D28E7C812%7D.PDF>.

46 4G Americas. About 4G Americas. <http://www.4gamericas.org/index.cfm?fuseaction=page§ionid=106>.

47 4G Americas. October 2012. *Developing and Integrating a High Performance HET-NET*. <http://www.4gamericas.org/documents/4G%20Americas%20-Developing%20Integrating%20High%20Performance%20HET-NET%20October%202012.pdf>.

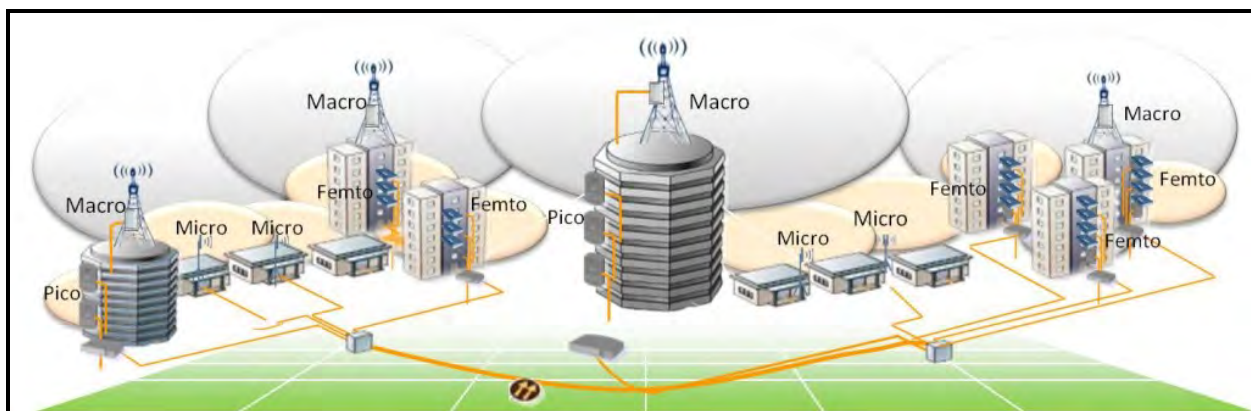


Figure 15: Basic Illustration of the HetNet as included in 4G Americas' *Developing and Integrating a High Performance HET-NET*. Image used from RCRWireless.com.⁴⁸

As noted above, the utilization of existing power poles, street lights, and traffic control infrastructure is very important to the deployment of traditional telecommunications infrastructure, DAS networks, and other microcell installation. Since much of this infrastructure is often desired to be located within public street and alley right-of-ways, other provisions, outside of zoning regulations, must also be devised so that comprehensive telecommunications regulatory control can be properly implemented in the City. In understanding this, input provided by the Department of Public Works and the Harrisonburg Electric Commission will be necessary. Such provisions must work within the confines of 47 USC § 224 Pole Attachments of the 1996 Act, which outlines specific rules regarding rates, terms, and conditions when attaching telecommunications to utility infrastructure,⁴⁹ and within the guidelines of the FCC's April 7, 2011 *Report and Order and Order of Reconsideration in the Matter of Implementation of Section 224 of the Act*.⁵⁰

If the City decides to amend the existing telecommunications regulations, planning for the installation of microcell sites must be considered, and if the City does not want towers popping up in places that are considered undesirable, then this technology should be encouraged by ordinance.

V. Conclusion

In returning to the discussion from the City's first telecommunications request in September 1996, a representative of the telecommunications industry stated, "...not only does [telecommunications] service increase the available communications services and therefore help people better communicate, it stimulates economic development... [and]... [i]t promotes economic growth as businesses realize their facilities and executives have access to state-of-the-art communications services." Although that statement was true then, the telecommunications technology has advanced well beyond its intentions in 1996, and therefore that quote is much more relevant and imperative to current lifestyles and the economy today than it was almost 17

⁴⁸ Image found on RCRWireless.com. RCRWireless: Intelligence On All Things Wireless. Mobile Backhaul Trends and Analysis. <http://www.rcrwireless.com/mobile-backhaul/lte-network-architecture-diagram.html>.

⁴⁹ Telecommunications Act of 1996. <http://transition.fcc.gov/Reports/1934new.pdf> - pages 59 of 333.

⁵⁰ Federal Communications Commission. April 7, 2011. *Report and Order and Order of Reconsideration in the Matter of Implementation of Section 224 of the Act*. WC Docket No. 07-245. <http://www.fcc.gov/document/implementation-section-224-act-national-broadband-plan-our-future-0>.

years ago. As identified in a February 2013 published FCC White Paper titled, *The Mobile Broadband Spectrum Challenge: International Comparisons*, the mobile wireless landscape is transforming with mobile broadband networks rising not only as the foundation of communications but also as the infrastructure that supports economic growth and innovation in widespread, consumer focused areas such as healthcare, public safety, education, and social welfare.⁵¹

As noted by Kreines and Kreines, Inc., since 2009, providers across the country have been steadily making, or requesting to make, upgrades and improvements to existing sites and requesting new sites to locate their infrastructure. In 2010, there was about 600 MHz of spectrum in the United States available for personal wireless services carriers to buy or use, and by 2015, an additional 800 MHz of spectrum could be needed.³ In addition to this prediction, the FCC believes global mobile data traffic is anticipated to grow eighteen-fold between 2011 and 2016.⁴⁴

Technology has changed significantly over the past 17 years and staff believes it would be good practice to update the City Code by amending the Zoning Ordinance and other policies by further addressing land use issues involving telecommunications facilities. Staff believes the driving force to update these regulations should be in being sensitive to the needs and desires of the Harrisonburg community while providing more opportunities for telecommunications. If Planning Commission agrees, staff will formally begin to draft a telecommunications ordinance.

Although ultimately more provisions would be included in the ordinance and other discussions still must be had—one of which is whether or not existing private property rights relative to telecommunications should be changed—at this time staff recommends some form of the following provisions be incorporated in an ordinance for the City to adopt:

1. To allow telecommunications within more zoning districts.
 - a. Such provisions could include allowing telecommunications in residential districts by special use permit only, where providers must utilize concealed technology.
2. To create opportunities for administrative review and approval.
 - a. Such provisions could include: allowing the placement of telecommunications by-right on existing roofs, walls, water tanks, existing towers, and other structures within business and industrial districts so long as the height of the structure is not increased or is not increased by a certain height or percentage of the supporting structure—these facilities should also be identical in color or closely compatible with the structure and flush mounted; and allowing concealed facilities by right in business and industrial districts.
 - b. Such provisions should not require additional fees aside from such required by building and sub-trade permits.
3. To allow telecommunications in public street right-of-way, other public right-of-way, and on publicly owned properties.
 - a. Such provisions could allow, with support from the Department of Public Works and the Harrisonburg Electric Commission, telecommunications on light stanchions, traffic signal infrastructure, and power and other utility poles. In

⁵¹ Federal Communications Commission. February 26, 2013. *The Mobile Broadband Spectrum Challenge: International Comparisons*. http://transition.fcc.gov/Daily_Releases/Daily_Business/2013/db0227/DOC-318485A1.pdf.

addition, such facilities, with support from the Harrisonburg City School Board, could be located on athletic facility light poles.

- b. These allowances could be permitted by administrative review and approval.
4. To require more information and details be submitted upon application.
 - a. Such requirements could include: photo-imagery or other visual simulation; for new towers—a balloon test shall be conducted to illustrate the height of the proposed tower and to notify the City when the test would be conducted and to require photographs of the balloon test be submitted upon application; an inventory of the providers existing facilities that are either within the City or within five miles of the City limits which shall specify the location, height, and design of the facility; and written evidence of the contact made with the owners of nearby facilities that they have inquired about the potential collocation opportunities that are technically feasible locations.
5. To require all telecommunication facilities, not on alternative structures (i.e. existing buildings, water tanks and towers, etc.), be setback 110 percent the height of the tower.
6. To require landscaping or other material that effectively screens the view of the support buildings from adjacent property.
7. To require freestanding telecommunications facilities to be designed to accommodate at least three providers or more depending upon the height of the facility.
8. To prohibit artificial lighting unless required by the FCC.
9. To require a form of surety to secure the cost to remove the tower and equipment and return the site to its original condition to the extent reasonably possible.
10. To allow at the discretion of the Director of Planning and Community Development, or their designated agent, to contract with experts to assist with the review of telecommunications facilities at an expense of the applicant not to exceed a specified amount.
11. To incentivize microcell and DAS technology.

Appendix A: Current Zoning Regulations Regarding Telecommunications



City of Harrisonburg, Virginia

DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

STAFF REPORT January 11, 2012

Current Zoning Regulations Regarding Telecommunications

The following report describes the City's current zoning regulations regarding telecommunications towers and equipment. In brief, three zoning districts—B-1, B-2, and M-1—allow private, commercial telecommunications structures through by-right permission or by approval of a special use permit (SUP). Such towers should not be confused with “communications facilities necessary for public safety purposes” or private amateur radio antennas.

The Zoning Ordinance does not define “telecommunications” or “telecommunications equipment;” the term associated with such systems is “communications tower,” and is defined as: *a structure that is intended to send and/or receive radio, television and other telecommunications signals*. It is interpreted that this definition includes stand alone towers as well as co-location equipment on buildings and other structures. Nevertheless, the Zoning Ordinance is not consistent with its use of “communications tower” and sometimes only refers to “telecommunications,” which staff treats the same as “communications tower” and “communications facilities.”

Other than its occurrence in Article F. Definitions, “communications tower” is only referenced three times. First, it occurs within Section 10-3-91, which is the special use permit (SUP) section of the B-2, General Business District. It is listed as subsection (4), where it states: *Communications tower no more than one hundred twenty-five (125) feet in height*. There have been several such SUPs approved in the past, and in 2011, the City approved two requests for this SUP. The first was in July for the property at 130 University Boulevard, at the corner of University Boulevard and Evelyn Byrd Avenue, where Verizon co-located on an existing tower, which now reaches 79 feet in height. The second request occurred recently in November and was located at 1106 Reservoir Street, where AT&T will erect a 125-foot tower. As most are aware, SUPs require public hearings with advertisements in the newspaper, postings of property, notifications sent to adjacent property owners, Planning Commission review, and a decision by City Council.

“Communications tower” is next referenced in Section 10-3-96, which is the M-1, General Industrial District's uses permitted by-right category, listed as subsection (15). The language is exactly the same as that within the B-2 SUP section, where the only difference is the use is by-right and not by SUP. These uses only require administrative approval that could include comprehensive site plan review and obtaining building, electrical, or mechanical permits. An

example of a property owner that took advantage of this by-right allowance is at 922 South High Street. This tower is located near Keister Elementary School's Central Avenue parking lot, but it is accessible from South High Street, diagonally across the street from the Taste of Tai restaurant. It was permitted in January 2007 and reaches a height of 120 feet. The City does not have an easy way to query records to determine exactly how many towers or co-locations on these towers have been permitted per this by-right use.

The last section of the Zoning Ordinance where "communications tower" is referenced is within the SUP category of the M-1, General Industrial District at 10-3-97 (6). The language within that subsection states: *Communications towers more than one hundred twenty-five (125) feet in height.* There have been only two such SUPs reviewed and approved by City Council. The first was in June 2003, when City Council approved a SUP that granted permission to Verstandig Broadcasting to bring their non-conforming, 350-foot towers into conformance with the Zoning Ordinance. The towers are located near Garbers Church Road and were annexed into the City in 1983. The other SUP was located at 30 Kratzer Avenue, where, in August 2004, Nextel Partners requested to co-locate communications equipment at the top of the Cargill Turkey Products, LLC feed tower, which stands at 185 feet in height. Although the SUP was approved, to staff's knowledge, Nextel never co-located their equipment on the feed tower.

The B-1, Central Business District also allows telecommunications equipment, however, the regulations within this district do not refer to the use as "communications tower," but rather as "telecommunications equipment and facilities," which, as a reminder, is not defined by the Zoning Ordinance. This district allows two different uses related to telecommunications. The first is within Section 10-3-84 (9), which permits telecommunications equipment and facilities by-right, provided such equipment and facilities are located in an enclosed structure. This use was added to the list of by-right uses of the B-1 district in 1994 when Shentel wanted to allow telecommunications equipment in the B-1 zoning district as a principle use in a building where they had no offices. The amendment was approved and they subsequently located within the building at 151 South Mason Street. To staff's knowledge, 151 South Mason Street is the only property that has this use. Also in B-1, Section 10-3-85 (2) allows telecommunications equipment and facilities not located in an enclosed structure by SUP. There have been four such requests and all were approved. The first occurred in December 2003 when Shentel received approval to locate on the rooftop of the building at 2 South Main Street (the building at the corner of Court Square and East Market Street). A second permit was approved in July 2005 to allow Verizon to also co-locate on the same rooftop. Then, in August 2005, Cellone received approval to locate on the rooftop of 101 North Main Street (also known as Harrison Plaza where the Police Department, the Fire Department, and the Emergency Communications Center (ECC) is located). Finally, in October 2006, Alltel received approval to also co-locate on the rooftop of Harrison Plaza. Since the time of the Harrison Plaza co-location SUPs, there has been an administrative acceptance of the concept that the City does not have to abide by its own zoning regulations.

There has been some confusion regarding the issue of "co-location." It should be understood that any telecommunications company can co-locate on any structure or building in the B-1, B-2, and M-1 zoning districts so long as they abide by the zoning regulations, which may require SUP approval, and, if necessary, submit and receive approval of a comprehensive site plan and further obtain the proper building, electrical, or mechanical permits. It is up to individual property owners and the interested party to determine if existing structures and buildings have the

physical capacity to allow co-location, and if necessary, these individuals are working in cooperation with the City's Building Inspections Division in receiving approval of appropriate permits, which may be related to a building's structural/physical capacity. One example of a co-location on a building in the B-2 district is on the Holiday Inn structure at 1400 East Market Street. In 2006, T-Mobile received approval of a SUP and mounted their panels to the side of the building. The panels are painted the same color as the building and are disguised extremely well. Although the properties are zoned residentially, co-location is also permitted on the City-owned public safety tower at Tower Street, the water tank at Tower Street, and at the tower behind Stone Spring Elementary School.

To be clear, "communications facilities necessary for public safety purposes" are permitted by SUP in all zoning districts except R-5, R-6, R-7, and MX-U. The use of communication facilities was added to the Zoning Ordinance in 2005 (prior to the creation of the R-5, R-6, R-7, and MX-U districts) in preparation of the installation of the public safety towers now located at Tower Street and near Stone Spring Elementary School. Both properties were granted SUPs in 2005 and both towers reach 199 feet in height. Per ordinance, these towers may reach 200 feet in height, and they may also include rental of space to private communication service providers. Private amateur radio antennas are permitted in all residential districts, including the MX-U district, when such structures are intended for public service and emergency use. These antennas may exceed the height otherwise established within the district so long as the height is justified for proper radio communications. Examples of such antennas would be amateur or ham radio antennas.

Staff does not have an inventory of every communications equipment or tower in the City nor do we know of every structure that may have co-location of telecommunications equipment. With this, it should be recognized that telecommunications equipment could be located on structures that may somehow be non-conforming, or they could even be located in an illegal fashion—meaning they did not receive appropriate permission or located in a place that, by ordinance, would not be permitted. We appreciate when property owners/telecommunication providers contact us regarding location and co-location opportunities; first, so we can ensure they abide by all governing regulations, but also so we can inform the ECC of the situation to ensure that it does not disrupt their communications systems.

Appendix B: Telecommunications Facility Locations

Table 1 includes the telecommunications sites within the City that are regulated by the Federal Communications Commission and were reported to the Virginia State Corporation Commission (SCC) as of September 20, 2012. Additional assistance was provided by the City's Commissioner of Revenue's Office including the Real Estate Office and the Virginia Department of Taxation. (The Verizon Wireless locations were further verified by the Verizon Wireless Real Estate Manager serving the region in which the City is located.) Note this list is intended to be comprehensive, but if there is equipment deployed on sites not listed below, then it was either not required to be reported, not reported to the SCC as of the date listed above, or has simply not been reported. Note that each row number corresponds to the telecommunications facilities numbered on the included map. Table 2 differentiates legal names with common carrier names.

Table 1: Telecommunications Towers, Antennas and Equipment within the City of Harrisonburg

	Tax Map	Physical Property Address	Zoning	Supporting Infrastructure & Height	Company Name(s) and Number of Tenants on Infrastructure
1*	6-C-1	2510 South Main Street	M-1	Tower (Exact height unknown)	1. WWC License, LLC
2	13-A-3	1400 East Market Street	B-2	Holiday Inn Building (42' – Flush mounted antennas)	1. T-Mobile License, LLC
3	14-L-7	1108 Reservoir Street	B-2	Tower (124')	1. New Cingular Wireless PCS, LLC 2. Shenandoah Personal Communications LLC Shentel
4^	17-B-1	206 Port Republic Road	R-3	Tower (Exact height unknown)	1. APC PCS, LLC 2. New Cingular Wireless PCS, LLC 3. Virginia PCS Alliance, L.C. 4. T-Mobile License, LLC
5	19-D-5	904 South High Street	M-1	Tower (120')	1. Verizon Wireless (VAW) LLC 2. APC PCS, LLC
6	20-A-2B	1176 South High Street	M-1	Water Tower (150' – Antennas reach 160')	1. APC PCS, LLC 2. Cook Inlet/VS GSM VII PCS, LLC 3. New Cingular Wireless PCS, LLC 4. T-Mobile License, LLC 5. Virginia PCS Alliance, L.C.
7	25-H-19	320 Chesapeake Avenue	M-1	Tower (199')	1. New Cingular Wireless PCS, LLC

8 [#]	32-D-1	670 Vine Street/653 Tower Street	R-2	Tower (199')	1. Verizon Wireless (VAW) LLC 2. T-Mobile License, LLC 3. APC PCS, LLC
9	34-B-1	30 Kratzer Avenue	M-1	Cargill Feed Mill Building (183' – Antennas mounted at 175')	1. New Cingular Wireless PCS, LLC 2. Nextel WIP License Corp.
10 [#]	34-P-1	101 North Main Street	B-1	Harrison Plaza Building (66' – Antennas reach 88')	1. WWC License, LLC
11	34-Y-10	2 South Main Street	B-1	Multi-use Building (82'4" – Antennas reach 84'6")	1. APC PCS, LLC 2. Virginia PCS Alliance, L.C. 3. Verizon Wireless (VAW) LLC or WWC License, LLC
12	35-X-9	135 West Market Street	B-1	Rosetta Stone In-Building Base Station/Booster (Height N/A)	1. T-Mobile License, LLC
13	37-C-3	85 Waterman Drive	M-1	Tower (Exact height unknown)	1. APC PCS, LLC
14	41-E-1	166 Charles Street	M-1	Tower (Exact height unknown)	1. APC PCS, LLC
15	56-A-9	1640 Red Oak Street	M-1	Tower (125')	1. T-Mobile License, LLC
16	78-B-2	85 University Boulevard	B-2	Hampton Inn Building (45'2" – Antennas reach 55'6")	1. New Cingular Wireless PCS, LLC 2. Verizon Wireless (VAW) LLC 3. Virginia PCS Alliance, L.C.
17	78-C-1	130 University Boulevard	B-2	Tower (79')	1. WWC License, LLC 2. APC PCS, LLC 3. Verizon Wireless (VAW) LLC
18 [@]	91-A-2	1575 Peach Grove Avenue	R-2	Tower (199')	1. Verizon Wireless (VAW) LLC 2. APC PCS, LLC 3. T-Mobile License, LLC

* Property listed by the SCC as an active site, however, Verizon Wireless decommissioned its equipment in 2010. Per a site visit, it appears this site has not been used by a telecommunications company in some time.

^ Property owned by Visitors James Madison University

Property owned by the City of Harrisonburg

@ Property owned by School Board City of Harrisonburg

Table 2: Wireless Companies Assessed by the State Corporation Commission

Common Carrier Name	Legal Name As Shown in Table 1
AT&T	<ul style="list-style-type: none">• New Cingular Wireless PCS, LLC
NTELOS	<ul style="list-style-type: none">• Virginia PCS Alliance, L.C.
Sprint-Nextel	<ul style="list-style-type: none">• APC PCS, LLC• Nextel WIP License Corp.
Shentel	<ul style="list-style-type: none">• Shenandoah Personal Communications LLC Shentel
T-Mobile	<ul style="list-style-type: none">• Cook Inlet/VS GSM VII PCS, LLC• T-Mobile License LLC d/b/a T-Mobile Northeast LLC
Verizon Wireless	<ul style="list-style-type: none">• Verizon Wireless (VAW) LLC• WWC License, LLC

Telecommunications Facility Locations (September 2012)

